

**STATE OF MINNESOTA**  
**DEPARTMENT OF RECORDS**

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**SUPREME COURT OF THE UNITED STATES**

**October Term, 1951**

**No. 251**

**THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL. APPELLANTS,**

**GREAT NORTHERN RAILWAY COMPANY**

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MINNESOTA**

**Filed June 27, 1951**

**Probable Jurisdiction noted October 4, 1951**

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 151

THE UNITED STATES OF AMERICA, INTERSTATE  
COMMERCE COMMISSION, ET AL., APPELLANTS,

VS.

GREAT NORTHERN RAILWAY COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MINNESOTA

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1 [File Endorsement Omitted]

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

GREAT NORTHERN RAILWAY COMPANY, A CORPORATION,  
*Petitioner,*

VS.

UNITED STATES OF AMERICA,  
*Defendant.*

**Petition—Filed December 19, 1950**

(Civil No. 3586)

To the Honorable Judges of the United States District Court for  
the District of Minnesota:

Comes now the petitioner above named and for its cause of suit  
against the defendant alleges and shows:

I.

—Petitioner Great Northern Railway Company hereinafter referred  
to as "Great Northern" is a corporation organized and existing  
under and by virtue of the laws of the State of Minnesota and  
having its principal office in that state. Great Northern operates  
lines of railroad in the states of Montana, North Dakota, South  
Dakota, Iowa, Minnesota, Wisconsin, Idaho, Washington, Oregon,  
and California and is engaged in the transportation of property  
and persons for hire both interstate and intrastate over said lines  
as a common carrier and is subject to the Interstate Commerce Act  
in respect of its interstate operations.

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II.

This suit is brought against the United States of America under  
the provisions of Title 28, U. S. Code, Sections 1336, 1398, 2284,  
2321, 2322, 2323, 2324 and 2325, to enjoin, set aside and annul a  
certain order entered by the Interstate Commerce Commission  
(hereinafter called the "Commission") in a proceeding identified  
as Docket 30325, *Valier Community Club vs. Montana Western  
Railway Company and Great Northern Railway Company*, on July  
31, 1950, as modified by subsequent amendments thereto postponing  
the effective date thereof and shortening the period of notice re-  
quired for tariff changes as hereinafter set forth. Said order was  
simultaneously entered in Finance Docket 16515, *In the Matter of*

*Montana Western Railway Company Abandonment*, in which proceeding Great Northern was not a party.

### III.

On August 1, 1949, the Valier Community Club, "a voluntary civic organization of Valier, Montana," filed with the Commission a complaint in said Docket 30325 in which Montana Western Railway Company, hereinafter referred to as "Montana Western" and Great Northern were made defendants. Therein Valier Community Club alleged that the combination of proportional rates applicable to the transportation of freight from Valier, Montana, a station located solely on Montana Western, to Minneapolis, Minnesota, via Montana Western to Conrad, Montana, a junction point between Montana Western and Great Northern, thence via Great Northern to Minneapolis "should be made a joint rate between Montana Western Railway and the Great Northern Railway Company"; and prayed that "an order be made creating a joint rate by the railroads above mentioned" in an amount the equivalent of said combination of proportional rates for said service and that said railroads be required to divide between themselves the proceeds from said joint rate to be created in such proportions as the Commission should order.

### IV.

Thereafter and on September 19, 1949, Great Northern filed with the Commission and served upon the parties to Docket 30325 a written motion that the Commission require complainant, Valier Community Club,

- (1) to make its complaint more definite and certain by conforming to the Commission's General Rules of Practice, by setting forth which section or sections of the Interstate Commerce Act it was claimed were being violated by defendants, and by stating upon what specific commodities it was seeking the establishment of joint rates from origins on the Montana Western to Minneapolis, Minnesota, via the lines of the defendants in Docket 30325;
- (2) to eliminate from the prayer of said complaint the request that the Commission in Docket 30325 prescribe the divisions to be received by the respective defendants of the joint rates which might be prescribed as a result of said proceeding; and
- (3) to strike from said complaint as immaterial and irrelevant to a determination of any issue presented by the complaint certain matters and things therein alleged.



Thereupon, on October 13, 1949, after consideration of said motion, the Commission entered an order in both Docket 30325 and Finance Docket 16515 said order reading in part as follows:

4 "It is ordered, That said motion be, and it is hereby, overruled, without prejudice to the renewal of any portion or the whole thereof at the hearing;

"It is further ordered, That Finance Docket No. 16515 be, and it is hereby, reopened for further hearing, and that No. 30325 and Finance Docket No. 16515 be heard or further heard for disposition upon a common record \* \* \*"

V.

Great Northern and Montana Western having duly filed with the Commission their separate written answers to said complaint, and issue having been joined in said Docket 30325, on December 5th and 6th, 1949, a hearing upon said complaint in Docket 30325 and in Finance Docket 16515 was held at Great Falls, Montana, before the Hon. Myron Witters, an Examiner for said Commission. At the commencement of said hearing Great Northern renewed said motion of September 19, 1949, and said motion was thereupon overruled. At said time Great Northern objected to the consolidation of Finance Docket 16515 with Docket 30325, for hearing and disposition upon a common record, and said motion was likewise overruled. At said hearing Valier Community Club, Great Northern and Montana Western offered evidence. Participation by Great Northern, both at said hearing and at all stages of the proceedings, was confined to Docket 30325. After the conclusion of the hearing said Examiner issued a proposed report, exceptions to such proposed report were filed with the Commission, and on June 7, 1950, the Commission heard oral argument in Docket 30325 and Finance Docket 16515, which were consolidated for argument. By its report and order entered July 31, 1950, in Docket 30325 and Finance Docket 16515 the Commission made the following findings with respect to the issues in Docket 30325:

5 "We \* \* \* find that it is necessary and desirable in the public interest that joint through rates be established for the interstate transportation of grain, in carloads, from points on the Montana Western to points on the Great Northern, and that such rates may not exceed the present combination of proportional rates to and from Conrad.

"We further find that just, reasonable, and equitable divisions of such joint rates are determined by the use as divisional factors of the distance rates set forth in appendix 10 of *Class Rate Investigation, 1939; supra*, [262 I.C.C. 447 at page 766] for the respective hauls of the two roads, provided that the

divisional factors thus determined for the Montana Western shall be increased 20 percent and provided further, that on grain to Minneapolis and Duluth, and points beyond, the divisional factors thus determined for the Great Northern shall be decreased 10 percent. Fractions in percentages shall be dropped when less than 0.5, increased to the next integer when over 0.5, and when equal an additional integer shall be added to the smaller of the percentages; fractions in divisional factors shall be dropped when less than 0.5 and increased to the next integer when 0.5 or over; and fractions in the resulting divisions shall be resolved to the nearest half cent."

The portions of the order entered at said time which are material to Docket 30325 are as follows:

*"It is further ordered,* That the above-named defendants in No. 30325 be, and they are hereby, notified and required to cease and desist, on or before November 16, 1950, and thereafter to abstain, from applying combinations of proportional rates for the interstate transportation of grain, in carloads, from points on the line of the Montana Western Railway Company to points on the line of the Great Northern Railway Company.

*"It is further ordered,* That said defendants, be, and they are hereby, notified and required to establish on or before November 16, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of grain, in carloads, from points on the line of The Montana Western Railway Company to points on the line of the Great Northern Railway Company, joint rates which shall not exceed the present combinations of proportional rates to and from Conrad, Mont.

*"It is further ordered,* That the just, reasonable and equitable divisions of the joint rates prescribed in the next preceding paragraph hereof shall be determined by the use as divisional factors of the distance rates set forth in appendix-10 to the report in *Class Rate Investigation, 1939*, 262 I.C.C. 447, at page 766, for the respective hauls of the Montana Western Railway Company and the Great Northern Railway Company; provided (1) that the divisional factors thus determined for the Montana Western Railway Company shall be increased 20 percent; (2) that on grain to Minneapolis and Duluth, Minn., and points beyond, the divisional factors thus determined for the Great Northern Railway Company shall be de-

creased 10 percent; and (3) that fractions shall be resolved as indicated in the report made a part hereof.

*"And it is further ordered, That this order shall continue in force until the further order of the Commission."*

A true and correct copy of said report is hereto attached marked Exhibit "A" and hereby made a part hereof. A true and correct copy of said order is hereto attached and marked Exhibit "B" and is hereby made a part hereof.

## VI.

Thereafter, by order entered on September 27, 1950, the Commission, on request of the Great Northern, extended the time for filing petitions for reconsideration of the Commission's decision in Docket 30325 to November 13, 1950, and postponed the effective date of said order dated July 31, 1950, from November 16, 1950, to December 15, 1950, upon not less than 30 days' notice. A copy of said order of September 27, 1950, is attached hereto marked Exhibit "C" and is hereby made a part hereof.

7 On November 3, 1950, Great Northern filed with the Commission a petition asking that Docket 30325 be reopened for reconsideration, that reargument be granted, that upon such reconsideration the Commission modify its said report as in said petition requested, vacate said order, and dismiss said complaint, and that pending such redetermination the Commission postpone the effective date of the outstanding order in said proceeding.

Thereafter by order entered on November 7, 1950, said order of July 31, 1950, as modified on September 27, 1950, was further modified by eliminating the provision that tariff changes be made effective on not less than 30 days' notice and providing for not less than one day's notice in lieu thereof. A copy of said order of November 7, 1950, is attached hereto, marked Exhibit "D," and made a part hereof.

The Great Northern's aforesaid petition for reconsideration, reargument, modification of the report, vacation of the order, and for postponement of the time for compliance pending redetermination filed November 3, 1950, was denied by an order of the Commission entered on December 4, 1950, said order further providing that the order entered in Docket 30325 dated July 31, 1950, as subsequently modified to become effective December 15, 1950, upon not less than one day's notice, be further modified to become effective January 15, 1951, upon not less than one day's notice. A copy of said order of December 4, 1950, is attached hereto marked Exhibit "E" and is hereby made a part hereof.

8 According to the terms of said outstanding order dated July 31, 1950, since amended (as aforesaid, Great Northern



is now required to comply therewith by filing with the Commission not later than January 14, 1951, schedules of rates or tariffs, containing the rate changes directed by said order, to become effective January 15, 1951, and by thereafter maintaining and observing said rate changes and the other requirements of said order.

## VII.

Great Northern avers and charges that said order of the Commission so entered in said Docket 30325 on July 31, 1950, amended as aforesaid, and herein complained of, requiring Great Northern to maintain and apply to the interstate transportation of grain, in carloads, from points on the line of the Montana Western to points on the line of the Great Northern; joint through rates not to exceed the existing combination of proportional rates to and from Conrad, Montana, and prescribing certain divisions thereof is wholly in excess of the Commission's statutory powers, is contrary to law, is violative of the Fifth Amendment to the Constitution of the United States, is otherwise unreasonable and unlawful, was entered arbitrarily and under misconceptions of law, and is null and void and should be set aside for the following reasons:

(1) The order prescribes joint through rates on the same level as said existing combination of proportional rates without any finding in the report that said existing proportional rates, either separately or in combination, are unreasonable or otherwise unlawful, without any allegation having been made in the complaint before the Commission that such proportional rates were or would be unreasonable or unlawful, and without any evidence of record to that effect. The sole purpose and effect of the report and order prescribing joint through rates on said level is to establish a foundation for fixing divisions of joint through rates in amounts which will assist Montana Western in meeting its financial needs. In so prescribing joint through rates on said level for said purpose the Commission acted wholly outside the provisions of Section 15(1) of the Interstate Commerce Act [49 U.S.C. 15(1)], wholly outside the provisions of Section 15(3) of said Act as limited by Section 15(4) thereof [49 U.S.C. Sections 15(3) and 15(4)], and wholly outside any other provision of said Act [49 U.S.C. Sections 1, et seq.]. Under said Section 15(1) joint through rates may not be prescribed where existing rates have not been found to be unreasonable or otherwise unlawful, and under said Section 15(3) as limited by said Section 15(4) joint through rates may not be prescribed where the purpose of the prescribed joint through rates is to assist a carrier that would participate therein to meet its financial needs. Said Section 15(1), and Section 15(3) as limited by Section 15(4), are the only provisions of said Act empowering the Commission to prescribe joint through rates.

(2) The order prescribes divisions of said joint through rates in the same proceeding that said joint through rates are ordered established, and at the same stage of said proceeding. In so prescribing divisions without awaiting the event on which the jurisdiction to prescribe divisions depends, to-wit, the existence of joint through rates and divisions thereof, the Commission acted wholly in excess of its statutory powers under Section 15(6) of said Act [49 U.S.C. 15(6)] and wholly outside its authority and powers under any other provision of said Act.

(3) The order prescribes divisions on the complaint of the Valier Community Club, which organization has no interest in or concern with divisions and no standing to complain thereof. This is likewise in excess of the Commission's statutory powers under said Section 15(6) and outside its said powers under any other provision of said Act. *Malt Rates to New Orleans, La.*, 30 I.C.C. 587, 590; *Baltimore & Ohio Railroad Co., et al. vs. United States, et al.*, 298 U. S. 349, 358.

(4) The order is void because made without a full hearing as required under Section 15(3) of the Interstate Commerce Act [49 U.S.C. 15(3)] and the Fifth Amendment to the Constitution of the United States. Said Section 15(3) as limited by Section 15(4) prohibits the prescription of joint through rates for the purpose of assisting a carrier which would participate therein to meet its financial needs. The denial of Great Northern's aforesaid motion to proceed only with the joint-through rate phase of the case and to dismiss the divisions phase of the case (in respect of which latter issue, and said latter issue only, the financial needs of Montana Western would be relevant) and the consolidation, over objection by the Great Northern, of Finance Docket 16515 with Docket 30325 for hearing and disposition upon a common record, said Finance Docket being replete with evidence of the financial needs of Montana Western, made it impossible to have a full hearing and a fair determination of the question whether joint through rates should be established in accordance with the only considerations pertinent under said Sections 15(3) and 15(4), but on the contrary brought into the case for consideration and determination factors which under the specific mandate of Section 15(4) the Commission is enjoined to disregard in determining whether joint through rates should be established. This failure to observe the statutory requirement for a full hearing upon the pertinent issues constituted a denial of due process in violation of the Fifth Amendment to the Constitution of the United States.

(5) The order prescribing divisions results from the Commission's report in Docket 30325, in which the Commission has measured the existing apportionment of through revenues by the ap-

pendix-10 scale of class rates set out in *Class Rate Investigation*, 1939, 262 I.C.C. 447, 776. Such scale was of controlling importance in the Commission's report. Its use as a standard in the instant proceeding was arbitrary, erroneous, inappropriate and illegal. Said scale has never become effective on any traffic and was originally designed to apply to a type of traffic completely different from the grain here involved, moving under conditions not shown to be similar and actually entirely dissimilar. The Commission adopted said scale as a standard without any evidence whatsoever that said scale would be an appropriate standard by which to measure the existing apportionment of through revenues on grain

moving from Montana Western to Great Northern points.  
12 No reference was made to said scale anywhere in the entire record in said proceeding. No notice was given by the Commission prior to the issuance of said report that said scale was to be considered as evidence. The Commission afforded no one an opportunity to show its utter impropriety as a standard. The Commission thus based its report on matters entirely *de hors* the record. This action was arbitrary and unlawful and in violation of Section 15(6) of the Interstate Commerce Act [49 U.S.C. Section 15(6)] requiring a full hearing before the Commission may prescribe divisions, and the order based on said report denies Great Northern due process in violation of the Fifth Amendment of the Constitution of the United States.

(6) The Commission's report and order condemning the present basis of apportionment of grain revenues between Great Northern and Montana Western and prescribing joint through rates and divisions for the future are completely without the support of any competent evidence of record and are in fact directly contrary to the evidence.

(7) The order insofar as it requires joint through rates and divisions on traffic other than that which moves from Valier, Montana, to Minneapolis, Minnesota, is void because it applies to traffic, and revenues from traffic, outside the scope of the complaint and wholly without the limitations within which the Commission's jurisdiction was invoked by said complaint.

13 (8) The order requires Great Northern to join with Montana Western, an insolvent railroad, wholly independent of Great Northern, in joint through rates applicable from stations which Great Northern has never reached and applicable over a railroad over which Great Northern has never held itself out to transport grain. Said order is not supported by any finding that the existing proportional rates on grain, either individually or in combination, are unreasonable or otherwise unlawful. In so requiring Great Northern to become a partner of an insolvent in an



operation entirely outside Great Northern's undertaking for the sole purpose of assisting said insolvent to meet its financial needs, the Commission deprives Great Northern of its property without compensation in violation of the Fifth Amendment of the United States Constitution:

### VIII.

If said order is permitted to become effective it will cause Great Northern irreparable injury and damage of the nature hereinafter set forth. As specific grounds for the issuance of a preliminary or interlocutory injunction against the enforcement of said order and pending a determination of the merits of the cause and also as grounds for the granting of a permanent injunction herein, Great Northern alleges and shows in addition to the facts above set forth the following:

1. If Great Northern complies with said order by establishing and publishing the joint through rates as prescribed by the Commission and establishing the divisions set forth in said order

14 Great Northern will suffer an annual loss in the amount of \$35,000 or more from the revenues it now receives under its existing reasonable proportional rates on grain from points on Montana Western to points on Great Northern.

2. If said order is ultimately enjoined and set aside in this proceeding but Great Northern complies therewith *pendente lite*, such revenue losses as it will inevitably sustain by being deprived of its reasonable proportional rates pending this litigation will be lost irretrievably and cannot be recovered from Montana Western, which is now insolvent.

3. If Great Northern refuses to comply with said order of the Commission such refusal will constitute a violation of the provisions of Paragraph 8 of Section 16 of the Interstate Commerce Act and such refusal may subject Great Northern to statutory penalties of \$5,000 for each such violation, each day of such refusal being deemed a separate offense, and such conduct will expose Great Northern to an action by the United States of America for the recovery of such penalties [49 U.S.C. Section 16, par. (8)].

### IX.

Great Northern has no plain, adequate or complete remedy at law in the premises.

WHEREFORE, petitioner, Great Northern Railway Company, prays as follows:

A. That this Court issue herein a preliminary or interlocutory injunction suspending and restraining the enforcement, operation and execution of said order of the Commission en-

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tered July 31, 1950, in Docket 30325, as amended, and that defendant, its officers and agents be enjoined and restrained from enforcing or attempting to enforce said order pending the final determination of this cause.

B. That upon final hearing herein a decree be entered setting aside, annulling and perpetually enjoining the enforcement of said order of the Commission and that by such decree defendant, its officers and agents be perpetually enjoined and restrained from enforcing or attempting to enforce said order against Great Northern.

C. That Great Northern have such other and further relief in the premises as the nature of the case shall require and as shall seem meet to this Court.

EDWIN C. MATTHIAS,  
ANTHONY KANE,  
LOUIS E. TORINUS, JR.,  
Attorneys for Petitioner,  
1120 Great Northern Building,  
St. Paul 1, Minnesota

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*Duly sworn to by Vincent P. Brown  
Jurat omitted in printing*

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### Exhibit "A" to Petition

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 16515<sup>1</sup>

### MONTANA WESTERN RAILWAY COMPANY ABANDONMENT

*Submitted June 7, 1950*

*Decided July 31, 1950.*

1. Public convenience and necessity found not to permit abandonment of the line of The Montana Western Railway Company, insofar as interstate and foreign commerce is concerned. Application denied.
2. Joint rates for the interstate transportation of grain, in carloads, from points on the Montana Western Railway to points on the Great Northern Railway found to be necessary and desirable in the public interest. Reasonable joint rates and just, reasonable, and equitable divisions of such rates prescribed.

<sup>1</sup> This report embraces also No. 30325, Valier Community Club v. Montana Western Railway Company et al.

*Art Jardine* for Montana Western Railway Company.

*Louis E. Popplar, Edwin S. Booth, Horace F. Casey, M. C. Johnson, Roscoe C. Lots, H. W. Ansell, J. P. Seifert, and Ralph J. Bricker* for protestants.

*Lester H. Loble* for complainant in No. 30325 and for protestants in Finance Docket No. 16515.

*R. J. Hagman* for Great Northern Railway Company.

## REPORT OF THE COMMISSION

### BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by the applicant in Finance Docket No. 16515 and by The Montana Western Railway Company and the Great Northern Railway Company, defendants in No. 30325, and the Valier Community Club, the State of Montana, and the Board of Railroad Commissioners of the State of Montana replied thereto. Our conclusions differ in part from those recommended by the examiner. Exceptions and requested findings not specifically discussed in this report nor reflected in the findings or conclusions have been given consideration and found not justified.

19 By application filed March 29, 1949, The Montana Western Railway Company, hereinafter called the applicant, applied for a certificate of public convenience and necessity authorizing the abandonment of its entire line of railway extending between Valier, Mont., and the junction point with the line of the Great Northern Railway Company. The junction point is about 2.98 miles from the station of the Great Northern at Conrad, Mont. The application was amended at the hearing to cover operations by the applicant over the tracks of the Great Northern. The entire length of the applicant's line, including the operation over tracks of the Great Northern, is about 20 miles.

By complaint in No. 30325 filed August 1, 1949, as amended at the hearing in December 1949, the Valier Community Club, a voluntary organization of citizens, seeks the establishment of reasonable joint rates on grain, in carloads, from points on the Montana Western to points on the Great Northern and the establishment of just, reasonable, and equitable divisions of such rates.<sup>2</sup>

The Great Northern is not a party to the abandonment application, but when the complaint in No. 30325 was filed, the Commission by order of October 13, 1949, reopened Finance Docket No. 16515 for further hearing and disposition upon a common record with No. 30325, with the proviso that witnesses previously heard in

<sup>2</sup> Rates and divisions of rates will be stated in cents per 100 pounds, except as otherwise noted.

the abandonment application should be made available for cross-examination by the Great Northern.

The Board of Railroad Commissioners of the State of Montana filed a motion in the abandonment proceeding objecting to the jurisdiction of this Commission and moving to dismiss the application, upon the grounds that the provisions of section 1 (18) and (20) of the Interstate Commerce Act do not extend to abandonment of an entire railroad system wholly owned and operated within a single State. This motion is based primarily upon the decision of the United States Supreme Court in *Texas v. Eastern Texas R. R. Co.*, 258 U. S. 204. In that case the railroad sought to be abandoned operated entirely within the State of Texas. Approximately three-fourths of its traffic was interstate and foreign commerce and the remainder was intrastate. The Court held that paragraphs (18), (19), and (20) of section 1 of the Interstate Commerce Act "should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business". The applicant has filed with the Board of Railroad Commissioners of the State of Montana an application which is substantially similar to that filed with us. The motion to dismiss for want of jurisdiction is overruled. Following our practice in such proceedings, any certificate which might be issued in a proceeding of this nature would be limited to operations in interstate and foreign commerce.

Applicant was incorporated under the laws of the State of Montana in 1909. The line was originally constructed in that year from Conrad to Valier, a distance of about 20 miles. In 1928 that portion of the line paralleling the tracks of the Great Northern near Conrad was abandoned and a junction with the Great Northern was constructed north of the station in Conrad. A trackage agreement was entered into with the Great Northern whereby the applicant was permitted to operate over the tracks of the Great Northern for a distance of 2.98 miles. Valier has a population of about 800 and Conrad about 2,000. There are two non-agency stations on applicant's line, Manson 7 miles from Conrad, and Williams 14 miles from Conrad. There is a small station building at both Manson and Williams but no other station facilities. The population of Manson is estimated as 10 and Williams as 11. However, there are two grain elevators at Williams and an elevator devoted entirely to the storage of mustard seed at Manson. The approximate area served by the applicant's line, exclusive of Conrad, is about 553 square miles, and the population served is about 2,000.



The train service consists of a mixed train which makes a round trip daily, except Sundays. The traffic handled consists of passengers, mail, and less-than-carload and carload freight. Express is handled as freight.

The possibility of operating applicant's line on a part-time basis and for freight service only has been under consideration for a long time. It was suggested that operation over the tracks of the Great Northern be discontinued by the construction at the junction point of an interchange track and a wye for turning the locomotive. The cars would then be picked up by the Great Northern at that point. The estimated cost of this construction is \$6,281 for the interchange track and \$1,374 for the wye, a total of \$7,655. It would be impossible, however, under present conditions for the applicant to obtain operating crews on a part-time basis. The loss of the mail contract would mean a loss in revenue of approximately \$2,900 per annum.

The Great Northern and a land irrigation company jointly furnished the money to construct the applicant's line. The Great Northern purchased the bonds and the irrigation company subscribed to the stock of the applicant. The Great Northern's agricultural agents were active in the years 1910 to 1917 in advertising and bringing settlers to the Valier irrigation project. The advertising literature distributed by the Great Northern stressed the fact that the Valier irrigation project was served by a railroad.

The applicant's bonded indebtedness is \$165,000, the entire amount of which is owned by the Great Northern. These bonds, dated January 1, 1912, bear interest at the rate of 6 percent. The maturity date has been twice extended and is now September 1, 1947. No interest has ever been paid on these bonds, and the amount of the principal has never been reduced.

In addition to the bonded indebtedness and unpaid interest, the applicant owes the Great Northern, as of March 31, 1949, \$195,829 for materials and supplies, repairs, labor, and money advanced to cover operating expenses. The total indebtedness of the applicant to the Great Northern, at the time of the first hearing in July 1949, was \$737,604. Since 1924, the applicant's operating losses have been paid by advances from the Great Northern.

The stock of the applicant consists of 2,000 shares, par value \$100 each. The Valier Company owns 1,995 shares, and the other 5 are directors' qualifying shares. In the early part of 1949, after the Great Northern had refused to make further advances to the applicant, the Valier Company advanced \$1,800 to the applicant for operating expenses.

The Valier Company is the successor in interest of three prior companies, the Conrad Land & Water Company, Valier Montana

Land & Water Company, and The Valier Montana Land & Water Company. The first of these companies started the construction of the Valier irrigation project and subscribed to the stock of the applicant railroad. The Valier Company now owns 26,000 acres of land in the vicinity of Valier, which is all leased to farmers.

23 On January 10, 1950, since the last hearing in this proceeding, the Supreme Court of the State of Montana, in an action for a declaratory judgment brought by the Valier Company against the Carey Land Board for the State of Montana, directed sales to actual settlers, in areas not greater than 160 acres to any one person, of certain lands which the predecessors of the Valier Company acquired by foreclosure or by deeds given by defaulting settlers in lieu of foreclosures. *Valier Co. v. State*, 215 P. 2d 966. It is anticipated that this decision will be appealed to the United States Supreme Court.

As of March 26, 1949, the Cargill Securities Company was the owner of 3,859 shares, or about 60 percent, of the capital stock of the Valier Company. The Cargill interests are among the largest grain dealers in the country.

Applicant's line was not built according to accepted standards of economical maintenance. Untreated crossties were laid on the ground with practically no ballast. As a result, drainage is almost nil on the greater portion of the line, and the crossties deteriorate rapidly. Normally, from 4,000 to 7,000 crossties are replaced each year. At the first hearing, applicant's superintendent testified that about 5,000 new crossties were needed for replacement within the next year, and at the second hearing he testified that it was necessary to replace about 8,350 crossties in 1950 for safe operation. All structures are in good condition, except the pile bridge over the dry fork Marias which was damaged in the flood of 1948. The cost of repairs to this bridge for safe operation was estimated at \$5,000 at the first hearing and \$5,500 at the second hearing. The weight of the rails is 58 and 60 pounds per yard. The roundhouse will probably have to be replaced in 1952, at a cost of about 24 \$7,000.

Applicant's rolling stock consists of one gasoline-electric locomotive, with a 600-volt, 125-horsepower engine, weighing 72,000 pounds; one steam locomotive, with 3 sets of drivers, weighing 54 tons; and one flat car.

The average number of employees in 1933 was 13 and in 1948, 13.3. The total compensation of all employees in 1933 was \$12,593 and in 1948, \$40,174, an increase of 311 percent. Applicant's employees are paid the same rate of pay per day as employees of the Great Northern. They are not, however, covered by the same working rules. They enjoy the benefits of the Railroad Retirement Act. Their seniority applies only on the line of the applicant.

There are no common-carrier motor trucks or motor-bus lines serving stations on the applicant's line, except Conrad. There are motor-truck and motor-bus services daily on Federal highway No. 91 running north and south through Conrad. An oil-surfaced highway runs between Valier and highway No. 91. The highway distance between Conrad and Valier is 23 miles. A graveled highway runs southwest from Valier, connecting with U. S. highway No. 89.

As indicated, over a period of more than 25 years the Great Northern has made advances to the applicant to cover its operating losses. By letter dated November 21, 1923, the vice president of the Great Northern advised the secretary of the applicant as follows:

"In a general way I can say we expect to see that the Montana Western is taken care of to the extent it is unable to take care of itself".

A similar letter from the Great Northern was addressed to the secretary of the applicant under date of December 20, 1937. In

August 1947, the vice president and general counsel of the Great Northern wrote to the applicant suggesting a 10-year extension

of the mortgage bonds from September 1, 1947 to Sep-

tember 1, 1957. Following this the Great Northern's en-

gineers, in the fall of 1947, made an inspection of the

applicant's line and formulated an 8-year rehabilitation pro-

gram involving an expenditure of \$171,000. In due course, the

Great Northern advanced to the applicant sufficient money to ac-

complish a portion of the program allocated during the year 1948.

However, the completion of the 1948 portion of the program was

prevented by a flood. The portion of the program allotted to 1948

involved an expenditure of \$27,295, of which \$17,000 was spent

in that year. On July 28, 1948, the Great Northern again requested

the officers of the applicant to extend the mortgage bonds. The ap-

applicant's officers declined to extend the bonds on the ground that there

was no hope of paying the indebtedness. They suggested that the

Great Northern take over the properties of the applicant, and

offered to execute a deed in lieu of foreclosure. On December 18,

1948, the Great Northern advised the officers of the applicant as

follows: "A continuation of the rehabilitation program on the

Montana Western is of no particular advantage to the Great North-

ern. In view of the Montana Western's attitude, as outlined in your

letter, the Great Northern cannot be expected to advance any

further cash or materials to the Montana Western in furtherance

of its rehabilitation program". By letter of March 1, 1949, the

Great Northern again advised that no further advances of funds

or materials and supplies would be made to the applicant.

Generally, about 96 per cent of the total freight traffic of the

applicant is interstate. During the past five years, 91 percent

of the total tonnage carried by the applicant and 97 percent of

the outbound tonnage has consisted of products of agriculture. The

agricultural products carried consist principally of wheat, oats, barley, and mustard seed. In 1946 and in 1947, 96 percent of the total tonnage consisted of grain. There is also a small tonnage of sugar beets. The applicant carried 883 carloads and 760 tons of less-than-carload freight in 1946, and 540 carloads and 663 tons in 1948. Most of the grain moves to Minneapolis and Duluth, Minn.

During the 16 years 1933 to 1948, both inclusive, the applicant's tonnage of products of agriculture averaged 27,662. The average number of tons of grain carried in the 15 years 1934 to 1948 was 23,586, and in the years 1939 to 1948, 25,774. The grain traffic over the years has not declined; on the contrary, during the last 10 years it has increased. The tonnage of grain carried in 1947 was 39,079. Assuming a weight of 50 tons per car, this amounted to 781 carloads.

Abandonment of the applicant's line would mean that grain producers in the areas served by the applicant would have to haul their grain about 25 miles to a railroad, instead of an average haul presently of 7.5 miles to a point on the applicant's line. Whether or not grain elevators now located on the applicant's line would be abandoned if the line were abandoned is uncertain, except as will later appear. Storage elevators or other local storage facilities for grain are approved by the government loaning authorities. The transportation charges from the point of storage must be paid by the Commodity Credit Corporation if the loan is not redeemed. If the grain is sold on the open market, the transportation charges are paid by either the buyer or the seller. Under present conditions, most of the grain is put in storage under the government loan plan, and becomes the property of the Commodity Credit Corporation when the loan is not redeemed. During 1943 and 1949, the elevators on the applicant's line and at Conrad and other points in this general territory were filled to capacity. Farmers have therefore been urged to provide their own storage space, and the government allows 7 cents a bushel per year for a storage charge on grain which is under loan. No government allowance for the storage of barley under loan was made in 1948, but in 1949 an allowance of 10 cents was made for storage of wheat or barley. It costs about 15 cents a bushel to provide facilities for grain storage in this territory.

Grain from the territory served by the applicant is also hauled to Cut Bank, Shelby, and Pendroy, Mont., points on the Great Northern, and to Agawam, Mont., on the line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter called the Milwaukee. During 1949, when elevator storage space on the applicant's line was mostly filled, grain producers in this area were forced to truck their grain to such points, whereas ordinarily they would have hauled such grain to Valier or Williams on the applicant's line.



Shelby is an inspection point for grain. There are elevator facilities at that point and transit arrangements are in effect. The destinations to which grain originating at Valier or Williams is shipped can best be ascertained by an examination of the points to which grain is reconsigned after inspection at Shelby. The months of heaviest grain movement from Valier to Shelby during 1946, 1947, 1948, and the first nine months of 1949 were selected for study. This study shows that 61.8 percent of the carloads of grain from Valier, reconsigned from Shelby, moved to eastern terminals, Minneapolis, Duluth, Grand Forks, N. Dak., and other points taking the same rates, as defined in Great Northern Railway tariff I.C.C. No. A-8352; 29 percent moved to north coast terminals, Seattle and Tacoma, Wash., Portland, Oreg., and other points taking the same rates, as defined in Agent W. J. Bohon's tariff I.C.C. No. 28-798; and 9.2 percent moved to Spokane, Wash.

Most of the farmers in the area served by the applicant ship their cattle by truck either to Great Falls, Mont., or to Shelby. A few carloads of sheep are handled annually. In the years 1938 to and including 1941, an average of 282 carloads of sugar beets were shipped out over the applicant's line. In 1946 and 1947 no sugar beets were handled, and in 1948 only 14 carloads were shipped. Sugar beets from Valier and Conrad moved to a refinery at Chinook, Mont. The distance from Valier to Chinook via Conrad and Shelby is about 157 miles. The applicable rate is a combination, composed of 51 cents per ton from Valier to Conrad and \$1.27 per ton from Conrad to Chinook. The ratio of the rate from Valier to Conrad to the through combination rate is 28.6 percent.

Valier is served by a natural gas pipe line, and natural gas is generally used for heating purposes. This has reduced the tonnage of coal on the applicant's line.

The net railway operating income or deficit of the applicant is shown below for the years 1944 to 1948, and for the first 10 months of 1949:

					Jan. 1 to Oct.
1944	1945	1946	1947	1948	31, 1949
\$833	*\$16,728	*\$5,466	*\$14,670	*\$27,107	\$2,904
*—Deficit					

It will be noted that in 1944 and in the first 10 months of 1949 the applicant operated at a profit, not including interest on its indebtedness. The average annual deficit in net income for the years 1933 to 1948 was \$18,672. The applicant's cash balance on October 31, 1949, was \$29,417.

The traffic carried by the applicant was subnormal in 1948 by reason of the fact that the grain was held in the elevators

29 generally under the government loan plan and was not moved out during the year. In 1949, however, more than the usual number of carloads of grain moved out over applicant's line. The heavy movement began in August after the car shortage in June and July. In August, September, October, and November 1949, it reached a total of 518 carloads.

The area served by the line produces from 800,000 to 1,000,000 bushels of grain annually. The wheat produced has a high protein content. Crop failures are rare since a part of the grain is raised on irrigated land.

There are six grain elevators on the applicant's line, and one elevator at Manson which is devoted to the storage of mustard seed. At the time of the first hearing there were seven grain elevators, but the Farmers' Union Elevator at Valier was totally destroyed by fire. Cargill, Incorporated, owns two grain elevators in Valier, and it was stated on their behalf that these two elevators would be continued in operation in the event the applicant's line is abandoned. There are two other grain elevators in Valier, one with a capacity of 40,000 bushels and the other with a capacity of 85,000 bushels. Additionally, two grain elevators are at Williams, with a total capacity of 80,000 bushels. It is doubtful whether the four elevators last mentioned would continue to operate if applicant's line were abandoned and this is also true of the elevator at Manson.

There is a bulk oil storage plant at Williams, but most of the oil stored in this plant is now brought in by motor truck. Normally, it moves by tank trucks of 5,000-gallon capacity.

Revenue from passenger operations was \$414 in 1947 and \$259 in 1948. The saving in operating expenses from the discontinuance of passenger service would be very slight, as a passenger car or caboose is needed for the trainmen.

30 The key grade is 3 percent. It occurs about a mile out of Valier and is against the outbound movement. This grade limits the capacity of the steam locomotive out of Valier to 8 carloads and the gasoline-electric locomotive to 2 carloads of grain. The steam locomotive can pick up two more cars and the gasoline-electric locomotive one more car at Williams for movement to Conrad.

In 1928, the assessed valuation of applicant's property for state and county tax purposes was \$180,095, and in 1949, \$117,100. The assessed value of all real and personal property in Valier in 1939 was \$569,090, and in 1948, \$1,002,239. The applicant's state and county taxes for 1949 amounted to \$4,400, and have not been paid. Likewise, one-half of the 1948 taxes, \$1,900, has not been paid. State and county authorities are here before us opposing the application. A reconsideration of applicant's assessed valuation, so as to ease the tax burden on this road, would be appropriate.

Applicant obtains its freight cars from the Great Northern under a per diem arrangement. On November 1, 1949, the per diem charge for freight cars became \$1.75 per car. The arrangement between the applicant and the Great Northern is substantially as follows: (1) On an empty car delivered by the Great Northern to the Montana Western, the per diem charge commences only from the time the Montana Western spots the car for loading and terminates with delivery of the car to the Great Northern, which period is adjusted to allow the Montana Western two days' free time as a maximum; (2) on a car delivered by the Great Northern to the Montana Western under load, the per diem commences from the time of delivery of the car to the Montana Western and continues until it is unloaded. There is no charge during the period the Montana Western holds the car for prospective loading. Per diem commences again when the Montana Western places the car for loading and continues until the loaded car is delivered to the Great Northern; subject to a maximum of two days' free time on each of the loaded movements.

The rates on grain from points on the applicant's line have always been proportional rates based on Conrad. There are no joint through rates on grain. The present proportional rate from points on the line to Conrad resulted from an agreement made in 1924 after an investigation by the Board of Railroad Commissioners of the State of Montana.

Joint through rates are in effect between points on the applicant's line and points on the Great Northern on many commodities. However, only about 5 percent of the carload tonnage carried by the applicant moves on joint through rates with the Great Northern.

The proportional rates on grain are 9 cents from Valier to Conrad, 20 miles, and 8.5 cents from Williams to Conrad, 14 miles. The proportional rate from Conrad to Minneapolis and points taking the same rate is 62.5 cents, making a combination of 71.5 cents from Valier and 71 cents from Williams. The proportional rate from Conrad to Seattle, Wash., and points taking the same rate is 58.5 cents, making a combination of 67.5 cents from Valier and 67 cents from Williams. The proportional rate from Conrad to Spokane, Wash., is 56 cents, making a combination of 65 cents from Valier and 64.5 cents from Williams. The local rates from Conrad are higher than the proportional rates by 3 cents to Minneapolis, 2.5 cents to Seattle, and 3.5 cents to Spokane. The complainant in No. 30325 seeks the establishment of joint rates the same as the through combination rates in effect, and just, reasonable, and equitable divisions of such rates, to points on the Great Northern.

The general basis of divisions of joint rates of the applicant with the Great Northern is 12.5 percent of the through rate or of the proportion of the through rate accruing west of the



Great Northern's eastern terminals of Omaha, Nebr., and Kansas City, Mo. These divisions apply to all freight, except as otherwise provided. There are some specific divisions in stated amounts on commodities such as coal, cement, and plaster. The 12.5 percent basis applies on livestock, subject to a maximum proportion in 1942 of \$15.75 per car. This maximum would now be \$23.47. On lumber from Montana, Washington, Idaho, Oregon, and British Columbia to Valier, the specific division in 1939 was 6.3 cents. From points in Wyoming to Valier the specific division of joint rates on petroleum products in 1939 was 6.5 cents. Because of the maximum increases authorized on and after June 20, 1946, and the method provided for increasing divisions where such divisions were a fixed amount, the present divisions on lumber and petroleum products cannot be determined upon the record. The rates to which these specific divisions in stated amounts apply are not shown.

Pendroy is at the end of a branch line of the Great Northern, 51 miles from the junction at Power, Mont., and 1,095 miles from Minneapolis. In 1948, the outbound movement from this branch consisted of 801 carloads. Augusta, Mont., is at the end of a branch line of the Great Northern connecting with the main line at Vaughn, Mont., a distance of 42 miles. The outbound movement from this branch in 1948 was 502 cars. Power and Vaughn are 42 and 56 miles, respectively, north of Conrad on the Great Falls-Shelby line of the Great Northern. Agawam is at the end of a branch line of the Milwaukee, 66 miles from Great Falls. In 1948, the outbound movement from this branch was 127 carloads. The applicant's line

produced substantially more traffic per mile of road than the Pendroy branch or the Augusta branch of the Great Northern, or the Agawam branch of the Milwaukee. The grain rates from Pendroy, Augusta, and Agawam are substantially the same as the rates from Conrad, there being 0.5 cent difference from Agawam to Minneapolis and 0.5 cent difference from Pendroy, Augusta, and Agawam to Spokane. The grain rates from and to these points are shown below:

From	To Minneapolis, Minn. Cents	To Seattle, Wash. Cents	To Spokane, Wash. Cents
Pendroy, Mont.	65.5	61	61
Augusta, Mont.	65.5	61	61
Agawam, Mont.	66	61	61
Conrad, Mont.	65.5	61	59.5
	62.5 <sup>1</sup>	58.5 <sup>1</sup>	56 <sup>1</sup>

<sup>1</sup> Applies only as a proportional rate on traffic originating on the Montana Western.



The rate on grain from Great Falls to Minneapolis is 65.5 cents, the same as the rate from Conrad, Pendroy, and Augusta, the rate from Agawam being 0.5 cent higher. The rate on grain from Great Falls to Seattle is 61 cents, the same as from Pendroy, Augusta, Agawam, and Conrad.

The Great Northern compared the proportional rates of the Montana Western on grain with divisions of joint rates on grain and lumber received by various other connecting short lines. These divisions range from 3.9 cents to The Waterville Railway Company for a haul of 5 miles to the junction at Douglas, Wash., on movements to north Pacific coast, Montana, and transcontinental destinations, to 7.8 cents to the Cowlitz, Chehalis & Cascade Railway for a haul of 15 miles to the junction at Chehalis, Wash., on shipments to transcontinental destinations. It does not appear that the conditions encountered on any of these short lines are similar to those on the Montana Western.

34 As indicated by the comparisons made, the rates from Pendroy and Augusta are lower for somewhat longer hauls than the rates from Williams and Valier, respectively, by 5.5 and 6 cents to Minneapolis, 6 and 6.5 cents to Seattle, and 3 and 4.5 cents to Spokane. These differences in rate level have their source in the relatively high proportional rates from Conrad, as will appear later in this report.

Section 15(6) of the Interstate Commerce Act provides that in determining divisions the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

There is no indicated inefficiency of operation, except such as may have resulted from the inability of the Montana Western to obtain sufficient revenue.

In the consideration of the amount of revenue required by the Montana Western, there is justification for the prescription of relatively higher divisional factors for the Montana Western than for the Great Northern. Substantial differences in the divisional factors, 35 percent greater for southwestern lines than for northern lines, for use in the division of joint rates between official and southwestern territories, 25 percent greater for southern lines than for

northern lines, for use in the division of joint rates between  
 35 official and southern territories, and 10 percent greater for  
 lines in western trunk-line zones other than zone I than for lines  
 in the latter zone and in official territory, for use in the division of  
 joint rates between official territory and western trunk-line zone I on  
 the one hand, and the remainder of western trunk-line territory  
 on the other, were prescribed, respectively, in *Southwestern-Official  
 Divisions*, 234 I.C.C. 135; *Divisions of Rates, Official and Southern  
 Territories*, 234 I.C.C. 175; and *Official Western Trunk Line Divi-  
 sions*, 269 I.C.C. 765. Factors 66.7 percent greater for southern  
 lines than for northern lines were prescribed in *Divisions of Rates,  
 Official and Southern Territories*, I.C.C., decided May 4,  
 1950, for use in the division of joint proportional rates on grain  
 from East St. Louis, Ill., Louisville, Ky., and Cincinnati, Ohio, to  
 southeastern destinations. The fact that on some of the grain the  
 northern lines receive inbound hauls to the points from which the  
 proportional rates apply was a consideration, as was also the fact  
 that the northern lines serve principally as intermediate carriers.  
 In the instant proceeding, much of the grain from Montana Western  
 origins to Minneapolis and Duluth receives additional hauls be-  
 yond those points, as to which the Great Northern is mostly an inter-  
 mediate carrier.

We are of the opinion that the appendix-10 scale of first-class  
 rates set out in *Class Rate Investigation, 1939*, 262 I.C.C. 447, 766,  
 increased 20 percent for the hauls over the Montana Western, are  
 appropriate factors for the division of joint rates on grain from  
 Montana Western origins to Great Northern destinations, except  
 that in the division of rates to Minneapolis and Duluth, factors for  
 the Great Northern 10 percent below the scale are warranted  
 36 because in many instances its services are those of an inter-  
 mediate carrier and in some instances it receives additional  
 revenue on the traffic beyond those two points.

The use of the appendix-10 scale, increased 20 percent for the  
 Montana Western hauls, and decreased 10 percent for the hauls  
 over the Great Northern to Minneapolis, would result in divisional  
 factors as follows:

From	To	Distance Miles	Appendix- 10 scale Cents	Factor
Valier, Mont.	Conrad, Mont.	20	48	58
Williams, Mont.	Conrad, Mont.	15	46	55
Conrad, Mont.	Minneapolis, Minn.	1,030	221	199
do	Spokane, Wash.	457	134	134
do	Seattle, Wash.	788	185	185

The use of such factors in the division of joint rates the same  
 as the combination rates now in effect would result in divisions as  
 follows:

From	To	Rates Cents	Factors		Percent		Divisions Cents	
			(1)	(2)	(1)	(2)	(1)	(2)
Valier, Mont.	Minneapolis, Minn.	71.5	58	199	23	77	16.5	55
Williams, Mont.	Minneapolis, Minn.	71	55	199	22	78	15.5	55.5
Williams, Mont.	Spokane, Wash.	64.5	55	134	29	71	18.5	46
Valier, Mont.	Seattle, Wash.	67.5	58	185	24	76	16	51.5
(1) Montana Western								
(2) Great Northern								

The relatively high level of the proportional rates of the Great Northern from Conrad is indicated in the relation to the appendix-10 scale. The proportional rate of 62.5 cents from Conrad to Minneapolis, 1,030 miles, is 28.3 percent of the scale rate of 221 cents, and the rate of 9 cents from Valier to Conrad, 20 miles, is 18.7 percent of the scale rate of 48 cents. The maintenance of relatively higher proportional rates by the Great Northern than by the Montana Western has no support upon this record.

37 The first-class rates of the Montana Western, which are used by the Great Northern as prorating factors in an endeavor to show the reasonableness of the proportional rates, also are upon a lower level, distance considered, than the first-class rates of the Great Northern. For example, the first-class rate from Valier to Conrad, 53 cents, is 110.4 percent of the appendix-10 scale rate of 48 cents, and the first-class rate of 512 cents from Conrad to Minneapolis is 231.7 percent of the appendix-10 scale rate of 221 cents. Rates of the Montana Western which are relatively lower than those of the Great Northern, distance considered, afford no basis for the computation of a rate prorated in the determination of equitable divisions.

An average increase of about 7.3 cents in the proportion to the Montana Western on grain to Minneapolis on 450 carloads, the approximate movement in 1947, would result in an increase in the annual revenue to that road of about \$32,850. The total annual revenue increase to that road which would result under the divisional factors indicated is estimated, roughly, at about \$58,000. The increased revenues for the Montana Western under the divisions herein prescribed are needed to insure safe and efficient operation of that carrier's line and to pay interest on its indebtedness to the Great Northern.

The proportional rate of 62.5 cents from Conrad to Minneapolis yields to the Great Northern 60.7 cents per car-mile. A division to that road of 55 cents out of the rate from Valier to Minneapolis, for example, under the foregoing divisional factors, would yield 53.4 cents a car-mile. Considering the proportional nature of this traffic from Conrad, such earnings compare favorably with car-mile yields of 59.8 cents under the rate from Pendroy and 61.2 cents under the rate from Augusta to Minneapolis.

38 We find that public convenience and necessity do not per-



mit the abandonment of the line of the Montana Western insofar as interstate and foreign commerce is concerned. The application in Finance Docket No. 16515 will be denied.

We further find that it is necessary and desirable in the public interest that joint through rates be established for the interstate transportation of grain, in earloads, from points on the Montana Western to points on the Great Northern, and that such rates may not exceed the present combination of proportional rates to and from Conrad.

We further find that just, reasonable, and equitable divisions of such joint rates are determined by the use as divisional factors of the distance rates set forth in appendix 10 of *Class Rate Investigation, 1939, supra*, for the respective hauls of the two roads, provided that the divisional factors thus determined for the Montana Western shall be increased 20 percent, and provided further, that on grain to Minneapolis and Duluth, and points beyond, the divisional factors thus determined for the Great Northern shall be decreased 10 percent. Fractions in percentages shall be dropped when less than 0.5, increased to the next integer when over 0.5, and when equal an additional integer shall be added to the smaller of the percentages; fractions in divisional factors shall be dropped when less than 0.5 and increased to the next integer when 0.5 or over; and fractions in the resulting divisions shall be resolved to the nearest half cent.

An appropriate order will be entered.

COMMISSIONERS ALLDREDGE and MITCHELL, being necessarily absent, did not participate in the disposition of this proceeding.

40

### Exhibit "B" to Petition

#### ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of July, A. D. 1950.

FINANCE DOCKET NO. 16515

MONTANA WESTERN RAILWAY COMPANY ABANDONMENT

No. 30325

VALIER COMMUNITY CLUB

v.

THE MONTANA WESTERN RAILWAY COMPANY AND GREAT  
NORTHERN RAILWAY COMPANY

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, and the Commission having, on the date hereof, made and filed a report

containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

*It is ordered*, That the application of The Montana Western Railway Company, in Finance Docket No. 16515, for a certificate of public convenience and necessity authorizing the abandonment of its entire line of railway, and as amended to cover operations by the applicant over the tracks of the Great Northern, be, and it is hereby, denied.

*It is further ordered*, That the above-named defendants in No. 30325 be, and they are hereby, notified and required to cease and desist, on or before November 16, 1950, and thereafter to abstain, from applying combinations of proportional rates for the interstate transportation of grain, in carloads, from points on the line of The Montana Western Railway Company to points on the line of the Great Northern Railway Company.

*It is further ordered*, That said defendants, be, and they are hereby, notified and required to establish, on or before November 16, 1950, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of grain, in carloads, from points on the line of The Montana Western Railway Company to points on the line of the Great Northern Railway Company, joint rates which shall not exceed the present combinations of proportional rates to and from Conrad, Mont.

*It is further ordered*, That the just, reasonable, and equitable divisions of the joint rates prescribed in the next preceding paragraph hereof shall be determined by the use as divisional factors of the distance rates set forth in appendix 10 to the report in *Class Rate Investigation*, 1939, 262 I.C.C. 447, at page 766, for the respective hauls of The Montana Western Railway Company and the Great Northern Railway Company; provided (1) that the divisional factors thus determined for The Montana Western Railway Company shall be increased 20 percent; (2) that on grain to Minneapolis and Duluth, Minn., and points beyond, the divisional factors thus determined for the Great Northern Railway Company shall be decreased 10 per cent; and (3) that fractions shall be resolved as indicated in the report made a part hereof.

*And it is further ordered*, That this order shall continue in force until the further order of the Commission.

By the Commission.

W. P. BARTEL, *Secretary*.

(SEAL)

**Exhibit "C" to Petition****ORDER**

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 16515

MONTANA WESTERN RAILWAY COMPANY ABANDONMENT

No. 30325

VALIER COMMUNITY CLUB

v.

THE MONTANA WESTERN RAILWAY COMPANY AND GREAT  
NORTHERN RAILWAY COMPANY

IN THE MATTER OF LETTER REQUEST OF GREAT NORTHERN RAILWAY  
COMPANY, DEFENDANT, FOR EXTENSION OF TIME FOR FILING  
PETITION FOR RECONSIDERATION, AND FOR POSTPONEMENT OF THE  
ORDER.

PRESENT: J. MONROE JOHNSON, Chairman, to whom the above-  
entitled matter has been assigned for action thereon.

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of letter request on behalf of the Great Northern Railway Company, defendant, for extension of time for filing petition for reconsideration, in No. 30325, and for postponement of the effective date of the order therein; and for good cause appearing:

*It is ordered*, That the time for filing petitions for reconsideration in No. 30325 be, and it is hereby, extended to November 13, 1950;

*It is further ordered*, That the order entered in No. 30325 on July 31, 1950, which by its terms is made effective November 16, 1950, upon not less than 30 days' notice, be, and it is hereby, modified to become effective December 15, 1950, upon like notice.

Dated at Washington, D. C., this 27th day of September, A.D. 1950.

By the Commission, Chairman Johnson.

W. P. BARTEL, *Secretary*.

(SEAL)

45

## Exhibit "D" to Petition

## ORDER

INTERSTATE COMMERCE COMMISSION

No. 30325

VALIER COMMUNITY CLUB

v.

THE MONTANA WESTERN RAILWAY COMPANY AND GREAT  
NORTHERN RAILWAY COMPANYIN THE MATTER OF REQUEST OF GREAT NORTHERN RAILWAY COMPANY  
FOR POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER.PRESENT: J. MONROE JOHNSON, Chairman, to whom the above-  
entitled matter has been assigned for action thereon.

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of request of Great Northern Railway Company, defendant, included in its petition for reconsideration, for postponement of the order; and for good cause appearing:

*It is ordered*, That the order entered in said proceeding on July 31, 1950, which was subsequently modified to become effective December 15, 1950, upon not less than 30 days' notice, be, and it is hereby, further modified to become effective upon one day's notice, instead of 30 days' notice.

Dated at Washington, D. C., this 7th day of November, A. D. 1950.

By the Commission, Chairman Johnson.

W. P. BARTEL, *Secretary*.

(SEAL)



## Exhibit "E" to Petition

## ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of December, A. D. 1950.

FINANCE DOCKET No. 16515

MONTANA WESTERN RAILWAY COMPANY ABANDONMENT

No. 30325

VALIER COMMUNITY CLUB

V.

MONTANA WESTERN RAILWAY COMPANY ET AL.

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition of Great Northern Railway Company, defendant, in No. 30325, for reconsideration, reargument, modification of the report and order, and for postponement of the time for compliance; petition of The Montana Western Railway Company for reconsideration and reargument in Finance Docket No. 16515 in the event the petition of the Great Northern Railway Company is granted; and the joint reply of Valier Community Club and Board of Railroad Commissioners of the State of Montana; and it appearing that the reasons set forth in said petitions do not justify reopening for reconsideration, reargument, or modification of the report and order:

*It is ordered*, That the said petitions be, and they are hereby, denied.

*It is further ordered*, That the order entered in No. 30325 on July 31, 1950, which was subsequently modified to become effective December 15, 1950, upon not less than one day's notice, be, and it is hereby, further modified to become effective January 15, 1951, upon like notice.

By the Commission.

W. P. BARTEL, *Secretary*.

(SEAL)

IN UNITED STATES DISTRICT COURT

**Answer of the United States of America—Filed February 19, 1951**

Now comes THE UNITED STATES OF AMERICA, defendant, and for answer to the complaint filed in the above-entitled action, admits, denies and avers as hereinafter set forth;

## I.

Answering paragraph I of the complaint, the United States admits the allegations thereof.

## II.

Answering paragraph II of the complaint, the United States admits that this is an action to enjoin and set aside an order of the Interstate Commerce Commission entered in its Docket No. 30325, entitled *Valier Community Club v. Montana Western Railway Company and Great Northern Railway Company*, and that this Court, pursuant to sections 1336, 1398, 2784 and 2321-2325 of Title 28, United States Code, has jurisdiction to hear and determine this action. The United States admits all other factual allegations in paragraph II in conformity with the facts of record in the above-described Commission docket.

## III.

Answering paragraph III of the complaint, the United States admits that a complaint was filed with the Interstate Commerce Commission by the Valier Community Club of Valier, Montana, and the United States respectfully invites the Court's attention to that complaint for a complete statement of the allegations thereof.

## IV.

Answering paragraph IV of the complaint, the United States admits the allegations thereof.

## V.

Answering paragraph V of the complaint, the United States admits the occurrence of all procedural steps before the Interstate Commerce Commission therein described. Further, answering, the United States admits that there is set forth therein a partial quotation from the report issued by the Commission in Docket No. 30325 and Finance Docket No. 16515, which report is attached to the complaint and made a part thereof as Exhibit "A."

## VI.

Answering paragraph VI of the complaint, the United States admits the occurrence of all procedural steps before the Interstate Commerce Commission therein described, except that the United States avers that the presently effective date of the Commission order in this matter is March 1, 1951, not January 15, 1951, as alleged in paragraph VI of the complaint.

## VII.

Answering paragraph VII of the complaint, the United States denies that the report and order of the Interstate Commerce Commission challenged therein are illegal or invalid for the reasons or any of them referred to or alleged in paragraph VII, or for any other reason.

## VIII.

50 Answering paragraph VIII, the United States denies that the plaintiff or any other person or persons will suffer any irreparable or legal damage by reason of the action of the Interstate Commerce Commission challenged therein. The United States respectfully submits to the Court that the other allegations of paragraph VIII are conclusions of law, to which no answer is required, but if the Court does not so deem such allegations, they are denied.

## IX.

For the purpose of a general answer to the complaint of plaintiff, the United States avers that the report and order of the Interstate Commerce Commission challenged therein were made and issued within the Commission's statutory authority upon substantial evidence after full and fair hearing, and that the report and order are lawful and valid in all respects. Defendant, the United States, denies that said report and order are invalid for the reasons assigned in plaintiff's complaint or for any other reason whatsoever.

WHEREFORE, having fully answered the complaint, The United States of America prays that the relief prayed for in the complaint be denied and the complaint be dismissed, plaintiff to pay the costs.

DONALD E. VAN KOUGHNET

*Special Assistant to the Attorney General  
Department of Justice, Washington, D. C.*

H. G. MORISON

*Assistant Attorney General*

JAMES E. KILDAY

JOHN F. BAECHER

*Special Assistant to the Attorney General*

CLARENCE U. LANDRUM

*United States Attorney*

Attorneys for The United States of America,  
defendant.

52

IN UNITED STATES DISTRICT COURT

[Title Omitted]

**Intervention of the Interstate Commerce Commission—Filed  
January 22, 1951**

TO THE HONORABLE THE JUDGES OF SAID COURT:

In accordance with the provisions of Section 2323, Title 28, U. S. Code, we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

DANIEL W. KNOWLTON

*Chief Counsel.*

EDWARD M. REIDY

*Associate Chief Counsel*

CHARLIE H. JOHNS

*Attorney.*

For Interstate Commerce Commission,  
3315 Interstate Commerce Comm. Bldg.,  
Washington 25, D. C.

[File Endorsement Omitted]

53

IN UNITED STATES DISTRICT COURT

[Title Omitted]

**Answer of Interstate Commerce Commission—Filed  
January 22, 1951.**

The Interstate Commerce Commission, intervening defendant in the above-entitled case, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I.

Answering the allegations of paragraphs I and II of the petition, the Commission admits the same.

II.

Answering the allegations of paragraph III of the petition, the Commission admits that a complaint was filed with it by the Valier



Community Club, to which the Commission refers the court for a complete statement concerning the allegations thereof.

54

## III.

Answering the allegations of paragraph IV of the petition, the Commission admits the same.

## IV.

Answering the allegations of paragraph V of the petition, the Commission admits the allegations thereof, and further admits that on July 31, 1950, it issued its report in Docket No. 30325 and Finance Docket 16515, which report is attached to the petition and made a part thereof as Exhibit "A", to which the Commission respectfully refers the court for a more complete description of its holdings therein. The Commission alleges that in said report it made findings of fact and conclusions of law which satisfied all statutory and judicial requirements.

## V.

Answering the allegations of paragraph VI of the petition, the Commission admits the same, except it alleges that the presently effective date of its order is March 1, 1951, and not January 15, 1951, as alleged in paragraph VI.

## VI.

Answering the allegations of paragraph VII of the petition, the Commission denies the allegations thereof, and further denies that its action was unlawful for any reason stated in said paragraph VII or for any other reason.

## VII.

Answering the allegations of paragraph VIII of the petition, the Commission denies that its order herein under review causes irreparable damage or any damage to plaintiff. The other allegations of paragraph VIII are conclusions of law, to which no answer is required, and which are irrelevant to any issues before this court.

55

## VIII.

Answering the allegations of the petition, the Commission admits and alleges that in the proceedings in the two dockets before this court, the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters

covered in said report of July 31, 1950, and subsequent orders were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its counsel; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiff herein, its said report of July 31, 1950, annexed to and made part of the petition as Exhibit A; that said report and subsequent orders included the Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its said report and subsequent orders were based.

The Commission further alleges that the findings and conclusions of said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

56 The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Commission further alleges that said report and order of July 31, 1950, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and subsequent orders the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition. The Commission denies that its said report and orders are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said petition, or for any other reason or reasons. The Commission denies that its said order causes, or will cause, plaintiff either irreparable damage or any damage if said report and order are not enjoined.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report referred to and made part of the petition as Exhibit "A".

57 All of which matters and things the Commission is ready to aver, maintain and prove as the Honorable Court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION

By: EDWARD M. REIDY  
Associate Chief Counsel,

CHARLIE H. JOHNS  
Attorney.

DANIEL W. KNOWLTON  
Chief Counsel,  
Of Counsel.

Duly sworn to by Charles D. Mahaffie, jurat omitted in printing.

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT

58

[Title Omitted]

Answer—Filed February 5, 1951.

Comes now MONTANA WESTERN RAILWAY COMPANY and for answer to the petition of the Great Northern Railway Company, a corporation, on file herein, admits, denies and alleges as follows:

I.

Montana Western Railway Company alleges that it is a corporation organized and existing under and by virtue of the laws of the State of Montana, having its principal office in that state.

II.

Montana Western Railway Company admits the allegations contained in paragraphs I, II, III, IV, and VI of the Petition of Great Northern Railway Company.

III.

Montana Western Railway Company admits the allegations contained in paragraph V of said Petition, except that allegation that "Participation by Great Northern, both at said hearing and at all stages of the proceedings, was confined to Docket 30325." As  
59 to said allegation, Montana Western Railway Company alleges that at the said hearing held in Great Falls, Montana, on December 5th and 6th, 1949, Great Northern Railway Company was offered the opportunity to offer evidence in regards

Finance Docket 16515, but as to whether any evidence introduced by Great Northern Railway Company at said hearing applied to Finance Docket 16515 this answering defendant does not have sufficient information to form a belief.

#### IV.

In answer to the allegations contained in paragraph VII of the petition of Great Northern Railway Company, Montana Western Railway Company denies that the order of the Commission therein referred to is in excess of the powers of the Commission, or is contrary to law, or is in violation of the Fifth Amendment to the Constitution of the United States, or is otherwise unreasonable or unlawful, or was entered arbitrary or under misconceptions of law, or is null and void, and should be set aside for the reasons therein set forth, or for any reason whatsoever.

#### V.

In answer to the allegations contained in paragraph VIII of said petition, Montana Western Railway Company denies that Great Northern Railway Company will suffer injury or damage as alleged in said paragraph. Further answering the allegations set forth in said paragraph VIII, Montana Western Railway Company admits that if Great Northern Railway Company complies with the order of the Commission by establishing and publishing joint through rates, as prescribed by said order, and establishing the divisions set forth in said order, Great Northern Railway Company will suffer an *average* annual loss in the amount of \$35,000.00 or more from the revenue it now receives under existing proportional rates on grain, and admits that Montana Western Railway Company is insolvent and admits that Great Northern Railway Company will, if it refuses to comply with the order of the Commission, be subject to the penalties referred to.

#### VI.

Save and except as hereinbefore specifically admitted or qualified, Montana Western Railway Company denies each and every allegation in said petition made or contained.

WHEREFORE, Montana Western Railway Company prays that the preliminary injunction be set aside and that the Court refuse to set aside, annul, or enjoin the enforcement of the order of the Interstate Commerce Commission, and that Montana Western Railway Company have such other and further relief in the premises as the



nature of the case shall require, or as shall seem meet and equitable to the court.

ART JARDINE,

Attorney for

MONTANA WESTERN RAILWAY COMPANY,  
410 First National Bank Building,  
Great Falls, Montana.

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

61

**Motion to Intervene As Defendants—Filed February 1, 1951**

To the Honorable Judges of the United States District Court for  
the District of Minnesota:

I.

That the Board of Railroad Commissioners of the State of Montana, a duly created and acting agency of the State of Montana having the duty of regulating the transportation by rail carriers within the State of Montana and is specifically charged by law with the duty of appearing before the Interstate Commerce Commission in cases involving interstate transportation by rail carriers.

II.

That the above entitled action was commenced in this court by filing of the petition and service thereof on the defendant. This motion for intervention is made before the filing of answer herein by the defendant. The Interstate Commerce Commission has filed its answer in intervention.

III.

Said petition is for the purpose of annulling and perpetually enjoining the enforcement of the Order of the Interstate Commerce Commission entered on July 31, 1950 in Docket No. 30325, *Valier Community Club vs. Montana Western Railway Company and Great Northern Railway Company*, providing for the establishment of joint through rates and the division thereof between the petitioner and the Montana Western Railway Company. That Docket No. 30325 is a companion case to Finance Docket No. 16515, In the Matter of Montana Western Railway Company, in which the Interstate Commerce Commission denied the application for abandonment.

## IV.

That the Board of Railroad Commissioners of the State of Montana was a party to and participated in proceedings before the Interstate Commerce Commission in both Docket 30325 and Finance Docket No. 16515. That the intervention of the said Board is necessary in order to permit it to carry out the duties imposed on it by statute to represent the people of the State of Montana in matters relating to interstate transportation. That intervention of the Board is authorized by the provisions of Title 28, U. S. Code Section 2323.

WHEREFORE, petitioners pray that an order be entered that it may be allowed to intervene as a defendant and granting leave to file the attached answer, and for such other and further relief as to this court seems just.

DATED this.....day of January, 1951.

63

ARNOLD H. OLSON,  
Attorney General of the State of  
Montana

LOUIS E. POPPLER,  
Assistant Attorney General of the  
State of Montana

EDWIN S. BOOTH,  
Secretary-Counsel of the Board of  
Railroad Commissioners of the  
State of Montana  
Attorneys for the Board of Railroad  
Commissioners of the State of Montana.

64 *Duly sworn to by Paul T. Smith, Jurat omitted in printing.*

[File Endorsement Omitted]

65

IN UNITED DISTRICT COURT

[Title Omitted]

**Consent to Intervention—Filed February 1, 1951**

Comes now the Interstate Commerce Commission, Defendant herein through its attorneys of record and consents to the filing of the answer in intervention submitted for filing by the Board of Railroad Commissioners of the State of Montana. Such interven-

tion being authorized under the provisions of Title 28, U.S.C. Section 2323.

Dated this 29 day of January, 1951.

EDWARD M. REIDY,  
CHARLIE H. JOHNS,  
Attorneys for the Interstate  
Commerce Commission.

[File Endorsement Omitted]

66

IN UNITED STATES DISTRICT COURT

[Title Omitted]

**Answer In Intervention of the Board of Railroad Commissioners of  
the State of Montana—Filed February 1, 1951**

The Board of Railroad Commissioners of the State of Montana, intervening defendant in the above-entitled case, hereinafter called the Board, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer; answers and says:

**I.**

That the Board of Railroad Commissioners of the State of Montana, is a duly created and acting administrative Board of the State of Montana delegated with authority for the regulation of intrastate transportation by rail carriers and with the duty and authority to appear before the Interstate Commerce Commission as to matters relating to interstate transportation within the State of Montana. That the Board participated in and was a party to the actions and proceedings referred to in the petition of the Great Northern Railway Company, plaintiff herein.

**II.**

Answering the allegations of paragraphs I and II of the petition, the Board admits the same.

**III.**

Answering the allegations of paragraph III of the petition, the Board admits that a complaint was filed therein by the Valier Community Club, to which the Board refers the court for a complete statement concerning the allegations thereof.

## IV.

Answering the allegations of paragraph IV of the petition, the Board admits the same.

## V.

Answering the allegations of paragraph V of the petition, the Board admits the same and further alleges that said report of the Interstate Commerce Commission in all respects satisfies statutory and judicial requirements.

## VI.

Answering the allegations of paragraph VI of the petition, the Board admits the same, except it alleges that the presently effective date of its order is March 1, 1951, and not January 15, 1951, as alleged in paragraph VI.

## VII.

68 Answering the allegations of paragraph VII of the petition, the Board denies the allegations thereof, and further denies that the action of the Interstate Commerce Commission was unlawful for any reason stated in said paragraph VII or for any other reason.

## VIII.

Answering the allegations of paragraph VIII of the petition, the Board denies that the order of the Interstate Commerce Commission herein under review causes irreparable damage or any damage to plaintiff. The other allegations of paragraph VIII are conclusions of law, to which no answer is required, and which are irrelevant to any issues before this court.

## IX.

Answering the allegations of the petition, the Board admits and alleges that in the proceedings in the two dockets before this court, the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report of July 31, 1950, and subsequent orders were submitted to the Interstate Commerce Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its counsel; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Interstate Commerce Com-



mission for determination on behalf of said parties by their respective counsel, including many of the particular questions raised by plaintiff in this suit, whereupon the Interstate Commerce Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiff herein, its said report of July 31, 1950, annexed to and made part of the  
69 petition as Exhibit A; that said report and subsequent orders included the Commission's findings of fact, conclusions and requirements in the premises, and that upon the evidence as aforesaid, and as shown in and by said report, the Interstate Commerce Commission made the findings and stated the conclusions upon which its said report and subsequent orders were based.

The Board further alleges that the findings and conclusions of said report of the Interstate Commerce Commission were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The Board further alleges that in making said report, the Interstate Commerce Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Board further alleges that said report and order of the Interstate Commerce Commission of July 31, 1950, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and subsequent orders the Interstate Commerce Commission did not exceed the authority which had been duly conferred upon it, and the Board denies each of and all the allegations to the contrary contained in the petition. The Board denies that its said report and orders of the Interstate Commerce Commission are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said petition, or for any other reason or reasons.

The Board denies that said order of the Interstate Commerce  
70 Commission causes, or will cause, plaintiff either irreparable damage or any damage if said report and order are not enjoined.

Except as herein expressly admitted, the Board denies the truth of each of and all the allegations contained in the petition, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report referred to and made part of the petition as Exhibit "A."

All of which matters and things the Board is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

ARNOLD H. OLSON, Attorney General of  
the State of Montana.

LOUIS E. POPPLER, Assistant Attorney  
General of the State of Montana.

EDWIN S. BOOTH, Secretary-Counsel of  
the Board of Railroad Commissioners  
of the State of Montana.

Attorneys for the Board of Railroad  
Commissioners of the State of Montana,  
Helena, Montana.

71 *Duly sworn to by Paul T. Smith, Jurat omitted in printing.*  
[File Endorsement Omitted]

72 IN UNITED STATES DISTRICT COURT  
[Title Omitted]  
Civil No. 3586

**Motion to Intervene as Defendant—January 27, 1951**

To the Honorable Judges of the United States District Court for  
the District of Minnesota:

I.

That the Valier Community Club is a voluntary civic organization of Valier, Montana, with a membership of over 250 farmers, ranchers and businessmen, representing a snipping population of 2,000 or more persons, and is composed of citizens and taxpayers who are now, and for a long period of time have been dependent upon the shipping facilities of the Montana Western Railroad Company and the Great Northern Railway Company;

73 II.

That the above entitled action was commenced in this court by filing of the petition and service thereof on the defendant. This motion for intervention is made before the filing of answer herein by the defendant, although the Interstate Commerce Commission has filed its answer in intervention;

## III.

Said petition is for the purpose of annulling and perpetually enjoining the enforcement of the Order of the Interstate Commerce Commission entered on July 31, 1950, in Docket No. 30325, *Valier Community Club vs. Montana Western Railway Company and Great Northern Railway Company*, PROVIDING for the establishment of joint through rates and the division thereof between the petitioner and the Montana Western Railway Company. That Docket No. 30325 is a comparison case to Finance Docket No. 16515, In the Matter of Montana Western Railway Company, in which the Interstate Commerce Commission denied the application for abandonment;

## IV.

That the Valier Community Club was a party to and participated in proceedings before the Interstate Commerce Commission in both Docket No. 30325 and Finance Docket No. 16515. That the intervention of the said Valier Community Club is necessary in order to permit it to protect the interests of its members, who are so vitally affected by this proceeding, as will more fully appear in the transcript of testimony and evidence presented in said matter. That intervention of the Valier Community Club is authorized by the provisions of Title 28, U. S. Code, Section 2323.

74 WHEREFORE, petitioner prays that an order be entered that it may be allowed to intervene as a defendant, and granting leave to file the attached answer, and for such other and further relief as to this Court seems just.

Dated this 27th day of January, 1951.

LOBLE AND LOBLE,

By LESTER H. LOBLE,

Attorneys for Valier Community Club,  
a Voluntary Civic Organization.

75 *Duly sworn to by Thomas A. Coverly, Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

76

[Title Omitted]

**Answer of Valier Community Club—Filed February 6, 1951**

The Valier Community Club, intervening defendant in the above-entitled case, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petition contained, for

answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

## I.

Answering the allegations of paragraphs I and II of the petition, the Valier Community Club admits the same.

77

## II.

Answering the allegations of paragraph III of the petition, the Valier Community Club admits that a complaint was filed with the Interstate Commerce Commission by your intervening defendant, Valier Community Club, to which the Valier Community Club refers the Court for a complete statement concerning the allegations thereof.

## III.

Answering the allegations of paragraph IV of the petition, the Valier Community Club admits the same.

## IV.

Answering the allegations of paragraph V of the petition, the Valier Community Club admits the allegations thereof, and further admits that on July 31, 1950, Interstate Commerce Commission issued its report in Docket No. 30325 and Finance Docket 16515, which report is attached to the petition and made a part thereof as Exhibit "A," to which the Valier Community Club respectfully refers the Court for a more complete description of its holdings therein. The Valier Community Club alleges that in said report it made findings of fact and conclusions of law which satisfied all statutory and judicial requirements.

## V.

Answering the allegations of paragraph VI of the petition, the Valier Community Club admits the same, except it alleges that the presently effective date of the Interstate Commerce Commission's order is March 1, 1951, and not January 15, 1951, as alleged in paragraph VI.

78

## VI.

Answering the allegations of paragraph VII of the petition, the Valier Community Club denies the allegations thereof, and further denies that the action of the Interstate Commerce Commission was unlawful for any reason stated in said paragraph VII or for any other reason.



## VII.

Answering the allegations of paragraph VIII of the petition, the Valier Community Club denies that the order of the Interstate Commerce Commission herein under review causes irreparable damage or any damage to plaintiff. The other allegations of paragraph VIII are conclusions of law, to which no answer is required, and which are irrelevant to any issues before this Court.

## VIII.

Answering the allegations of the petition, the Valier Community Club admits and alleges that in the proceedings in the two dockets before this court, the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearing provided for by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in said report of July 31, 1950, and subsequent orders were submitted to the Interstate Commerce Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its counsel; that at said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Interstate Commerce Commission for determination on behalf of said parties

by their respective counsel, including many of the particular  
79 questions raised by plaintiff in this suit, whereupon the Interstate Commerce Commission determined said matters and entered and served upon all the parties to said proceedings, including the plaintiff herein, its said report of July 31, 1950, annexed to and made part of the petition as Exhibit A; that said report and subsequent orders included the Interstate Commerce Commission's findings of fact, conclusions and requirements in the premises, and that, upon the evidence as aforesaid, and as shown in and by said report, the Interstate Commerce Commission made the findings and stated the conclusions upon which its said report and subsequent orders were based.

The Valier Community Club further alleges that the findings and conclusions of said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings, as aforesaid.

The Valier Community Club further alleges that in making said report, the Interstate Commerce Commission considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel, including many of the matters covered by the allegations of the petition herein.

The Valier Community Club further alleges that said report and order of July 31, 1950, were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said report and subsequent orders, the Interstate Commerce Commission did not exceed the authority which had been duly conferred upon it, and the Valier Community Club denies each of and all the allegations to the contrary contained in the petition. The Valier Community Club denies that said report of the Interstate Commerce Commission, and orders, are unreasonable, arbitrary, unlawful; or null and void for any of the reasons set forth in said petition, or for any other reason or reasons. The Valier Community Club denies that said order of the Interstate Commerce Commission causes, or will cause, plaintiff either irreparable damage or any damage if said report and order are not enjoined.

## IX.

That the Valier Community Club is a voluntary civic organization of Valier, Montana, with a membership of over 250 farmers, ranchers and businessmen, representing a shipping population of 2,000 or more persons, and is composed of citizens and taxpayers who are now, and for a long period of time have been dependent upon the shipping facilities of the Montana Western Railroad Company and the Great Northern Railway Company;

Except as herein expressly admitted, the Valier Community Club denies the truth of each of and all the allegations contained in the petition, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report referred to and made part of the petition as Exhibit "A."

All of which matters and things the Valier Community Club is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

VALIER COMMUNITY CLUB

By LESTER H. LOBLE

Lester H. Loble

OF LOBLE & LOBLE  
Attorneys for Valier  
Community Club.

81 *Duly sworn to by Thomas A. Caverly, Jurat omitted in printing.*

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

82

[Title Omitted]

**Order Convoking the Three-Judge Court and Notice of  
Hearing—Filed February 6, 1951**

It appearing that the petition filed in the above-entitled cause is brought to enjoin the enforcement of an order made by the Interstate Commerce Commission upon the grounds that said order is wholly void, and that said petition contains a prayer for an interlocutory and permanent injunction, a statutory three-judge court is hereby convoked pursuant to Sections 2284 and 2325, Title 28, United States Code, composed of the Honorable John B. Sanborn, Judge of the United States Court of Appeals of the Eighth Circuit, the Honorable Matthew M. Joyce, Judge of the United States District Court for the District of Minnesota, and the Honorable Dennis F. Donovan, Judge of the United States District Court for the District of Minnesota.

It is further ordered that said application be and it is hereby set for hearing in the United States District Court Rooms, United States Court House, in the City of Minneapolis, State of Minnesota, on Tuesday, the 20th day of February, 1951, at 10:00 o'clock in the forenoon of said day, and that five days' notice of said hearing be given to the Attorney General of the United States, to the United States District Attorney for the District of Minnesota, to the Interstate Commerce Commission, to the Board of Railroad Commissioners of the State of Montana, to Montana Western Railway Company, a corporation, and to Valier Community Club, a voluntary civic organization.

MATTHEW M. JOYCE

Judge of the United States District  
Court for the District of Minnesota.Minneapolis, Minnesota  
February 6th, 1951.

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

82½

[Title Omitted]

**Notice of Hearing—Filed February 6, 1951**

To Interstate Commerce Commission,  
To Attorney General of the United States,  
To United States Attorney for the District of Minnesota,  
To Board of Railroad Commissioners of the State of Montana,  
To Montana Western Railway Company, a corporation, and  
To Valier Community Club, a voluntary civic organization.

You, and each of you, are hereby given notice pursuant to the provisions of Sections 2284 and 2325, Title 28, United States Code, that the District Court of the United States for the District of Minnesota has set for hearing and determination in the United States District Court Rooms, United States Court House, in the City of Minneapolis, State of Minnesota, on the 20th day of February, 1951, at 10:00 o'clock in the forenoon of said day the application of petitioner for a permanent injunction in the above-entitled cause setting aside and perpetually enjoining the enforcement of the order of the Interstate Commerce Commission in said petition referred to, and the application of petitioner for an interlocutory injunction *pendente lite*. Said order as referred to in said petition as aforesaid was entered by the Interstate Commerce Commission in its Docket 30325, Valier Community Club vs. Montana Western Railway Company and Great Northern Railway Company, and said petition seeks to enjoin the enforcement of said order as subsequently amended upon the ground that the same is wholly void.

There is served upon each of you herewith a copy of the order of the District Court of the United States for the District of Minnesota, dated February 6th, 1951, convoking a three-judge court for the hearing of said petition, including the prayer of said petition for an interlocutory and permanent injunction.

CHELL M. SMITH.

Clerk of the United States District  
Court for the District of Minnesota.

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

83

[Title Omitted]

**Order Organizing Three-Judge Court—Filed December 26, 1950**

Plaintiff having filed suit in this action now pending in the above entitled court, seeking temporary and permanent injunction against the United States of America and the Interstate Commerce Commis-



sion from enforcing or carrying out and seeking to set aside a certain order of said Interstate Commerce Commission dated July 31, 1950, effective by its terms January 15, 1951, but which by amendment has been made effective March 1, 1951, in docket No. 30325, Valier Community Club vs. Montana Western, on the grounds, among others, that said order is violative of certain provisions of the Constitution of the United States, and said application for injunction having been presented to the Honorable Matthew M. Joyce, United States District Judge for the District of Minnesota and said Judge having notified the Chief Judge of the United States Court of Appeals for the eighth Circuit thereof;

IT IS NOW HERE ORDERED that Honorable John B. Sanborn, United States Circuit Judge, and Honorable Dennis F. Donovan, United States District Judge for the District of Minnesota, be and they hereby are designated to sit with the above named Honorable Matthew M. Joyce, United States District Judge for the District of Minnesota, to hear and determine said action and proceeding.

Dated this 26th day of December, A. D. 1950.

ARCHIBALD K. GARDNER

Chief Judge of the United States Court  
of Appeals, for the Eighth Circuit

[File Endorsement Omitted]

84

BEFORE INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 16515

MONTANA WESTERN RAILWAY COMPANY—ABANDONMENT

No. 30325

VALIER COMMUNITY CLUB

V.

MONTANA WESTERN RAILWAY COMPANY ET AL.

IN THE MATTER OF POSTPONEMENT OF THE EFFECTIVE DATE  
OF THE ORDER

PRESENT: WILLIAM E. LEE, Commissioner, to whom the above-entitled matter is assigned for action thereon.

Order postponing effective date of its order

Upon consideration of the fact that the U. S. District Court of the District of Minnesota, Fourth Division, by an opinion dated March 16, 1951, has held that the Commission's order in the above-entitled proceedings should be vacated and set aside.

*It is ordered.* That the order entered in said proceedings on July 31, 1950, which was subsequently modified to become effective April 1, 1951, upon not less than one day's notice, be, and it is hereby, further modified so as to postpone the effective date thereof until the further order of the Commission.

Dated at Washington, D. C., this 28th day of March, A. D. 1951.

By the Commission, Commissioner Lee.

W. P. BARTEL,  
Secretary.

### Proceedings before the Interstate Commerce Commission

85 [Secretary's Certificate omitted in printing]

88 [File Endorsement Omitted]

#### BEFORE THE INTERSTATE COMMERCE COMMISSION

**Application of the Montana Western Railway Co. for a Certificate of Public Convenience and Necessity Authorizing the Abandonment of Its Entire Line of Railway, Which Runs Between Valier and a Junction Point About 3.2 Miles Distant from the Station of Great Northern Railway Company at Conrad, in Pondera County, Montana—Filed March 29, 1949**

Comes now The Montana Western Railway Company (hereinafter called the "Applicant") and files its application under and pursuant to paragraphs (18) to (22), inclusive, of Section 1 of the Interstate Commerce Act, as amended, and respectfully sets forth and shows:

(a) Applicant's exact corporate name is "The Montana Western Railway Co."

(b) Applicant is a carrier by railroad subject to the Interstate Commerce Act.

(c) Applicant proposes to abandon its entire line of railway described as follows:

Beginning at the point of connection with the Great Falls to Shelby line of the Great Northern Railway Company located in the Northwest quarter of the Southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section One (1) in Township Twenty-eight (28) North, Range Three (3) West, Montana Meridian, Montana, about 3.2 miles north of Conrad, Montana, thence running Northwesterly to the end of main track in the Northwest quarter of the Southeast quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Thirty-three (33), Township Thirty (30) North, Range Five (5) West, Montana Meridian, Montana, at Valier, Montana, being a total length of 17.51 miles of Railroad located entirely in Pondera County, in the State of Montana.

89 (d) Applicant seeks authority to abandon its entire line of railway described above, as well as the operation thereof.

(e) As reasons why the proposed abandonment should be permitted, Applicant states that continued maintenance and operation of its railway, either in whole or in part, are uneconomical, and are not warranted by present or prospective traffic; and that the continued imposition on Applicant of the cost of continued rail service on its said railway, or any part of the same, would be a burden upon it and upon interstate commerce, not commensurate with any benefits accruing to the public from the continuance of such rail service or which is required by public convenience and necessity. Applicant says, further, that for some years past, it has been able to maintain and operate its said railway only because of sums of money advanced and lent to Applicant, from time to time, by Great Northern Railway Company, the owner and holder of all the Bonds issued by Applicant, which are Bonds secured by a first mortgage lien on its property; and that Applicant is now indebted to Great Northern Railway Company, on its Bonds, in the principal amount of One Hundred Sixty-five Thousand Dollars (\$165,000.00), together with interest thereon at the rate of six percent (6%) per annum from January 1, 1912; and that, in addition, Applicant owes to Great Northern Railway Company large sums of money (and interest thereon) for sums from time to time advanced and lent to The Montana Western Railway Co. to pay operating, maintenance, and other railway expenses. And Applicant says, further, that on or about January 21, 1949, Great Northern Railway

90 Company notified Applicant that it would no longer advance or lend to Applicant further sums of money for maintenance or rehabilitation purposes; and that on or about February 28, 1949, Great Northern Railway Company (in addition) informed Applicant that it would advance or lend to Applicant no further sums of money for any purposes whatsoever. Applicant says, further, that at the present time it has on hand funds of its own sufficient to operate its said railway for a period of not more than thirty (30) days; and that aside from the possibility of receiving from The Valier Company (a Montana corporation), *for a very limited period of time only*, small short-time loans of money to be repaid out of gross earnings as soon as available, Applicant is without ways and means by which to raise additional funds with which to pay current and future operating expenses, *including money with which to pay Applicant's employees*. Applicant says, further, that on or about February 23, 1942, it expressed to Great Northern Railway Company Applicant's readiness and willingness to convey to Great Northern Railway Company (by good and sufficient Deeds and other proper instruments), all of Applicant's property (real,

personal, and mixed), in satisfaction of its indebtedness to Great Northern Railway Company; and that on or about February 28, 1949, Applicant renewed said offer; and that Applicant is still ready and willing to execute such conveyance. Applicant also says, that Great Northern Railway did not accept this first offer; and that as to the second offer, Great Northern Railway Company expressed (to Applicant) its intention not to take and not to operate (as a Common carrier by railroad) Applicant's railway, under any circumstances, because of the impossibility of operating the same except at a loss.

91 (f) *Applicant respectfully brings to the attention of the Interstate Commerce Commission the desirability of prompt hearing and action on this present application*, in view of Applicant's rapidly diminishing funds, which soon will be insufficient to meet Applicant's payrolls (unless some temporary relief can be obtained from the Valier Company by way of small loans, as mentioned in Paragraphs (e) above); and also in view of the fact that Great Northern Railway Company is unwilling to take and to operate Applicant's railway, so long as applicant shall continue to be under duty to operate the road, (there being no prospect of successful operation thereof).

(g) Correspondence in regard to this application should be addressed to Art Jardine, care of Jardine, Chase & Stephenson, Attorneys, 410 First National Bank Building, Great Falls, Montana.

(h) Applicant is incorporated under the laws of Montana, having been originally chartered under the general laws of the State of Montana in 1909. It is authorized to locate, construct, conduct, own, equip, operate and maintain a railroad from some point in the town of Conrad, in the County of Teton (now Pondera), in the State of Montana, in a generally Northwesterly direction (through said County) to some convenient point in Section Thirty-three (33), Township Thirty (30) North, Range Five (5) West, of the third principal meridian in said County. Applicant is now operating such a line of railway, more particularly described in paragraph (c) above; and also has certain trackage rights over 3.2 miles of the line of Great Northern Railway Company, extending from a Junction 3.2 miles north of Conrad, Montana; to the Great  
92 Northern Depot at Conrad, Montana.

(i) The Board of Directors of Applicant, on March 7th, 1949, at Valier, Montana, duly passed a Resolution authorizing the making and filing of this application.

(j) This application is not made by receivers or trustees in bankruptcy.

(k) There is hereto attached, marked Exhibit "A" and made a part hereof, a situation map as required by paragraph 42.1 (j) of



the Commission's rules dated November 27th, 1941, relating to application for abandonment.

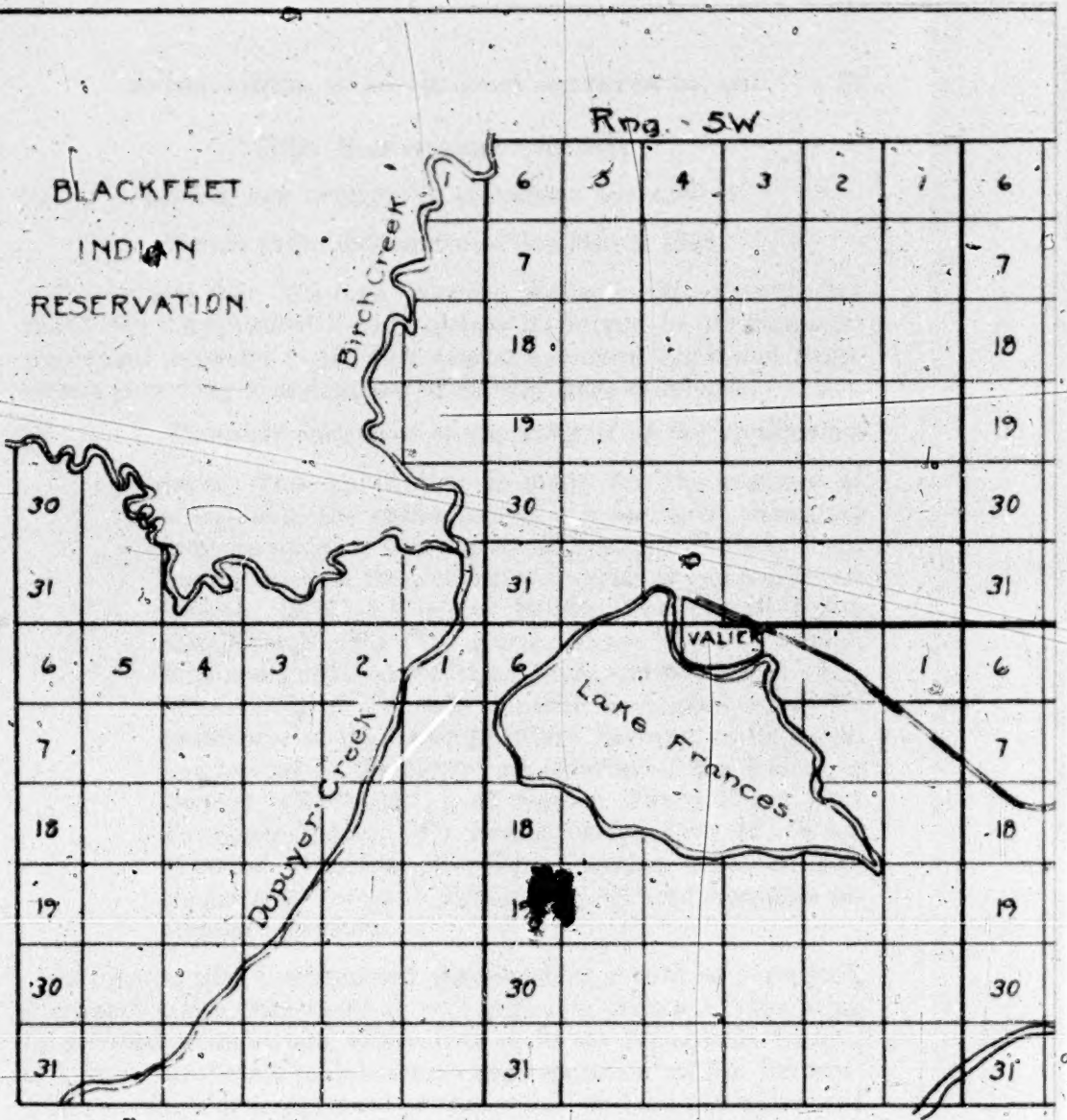
WHEREFORE, Applicant respectfully prays the Commission to issue its certificate that the present and future public convenience and necessity permit of the proposed abandonment.

THE MONTANA WESTERN RAILWAY CO.

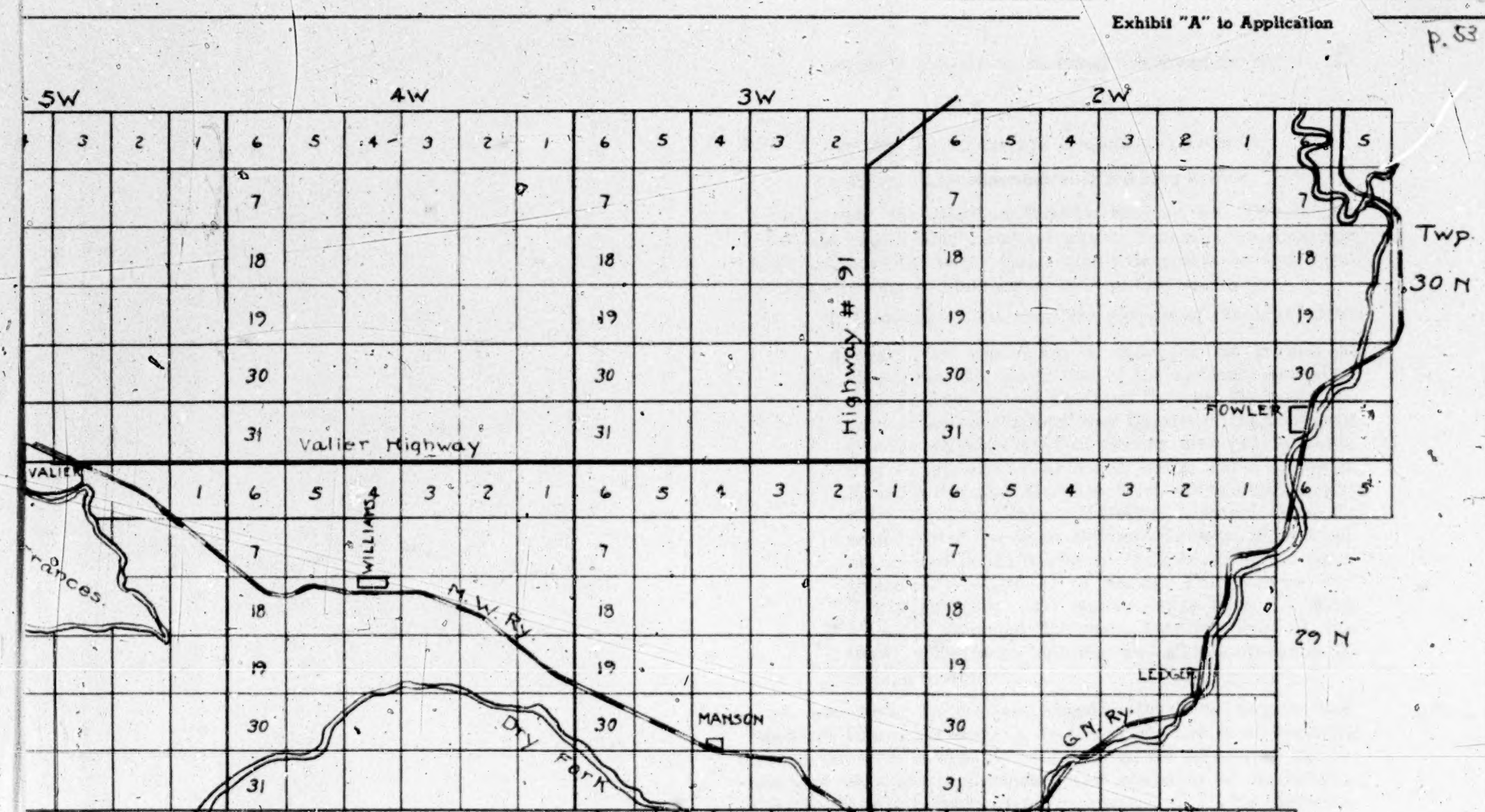
By W. F. PALIN,

*Vice-President*

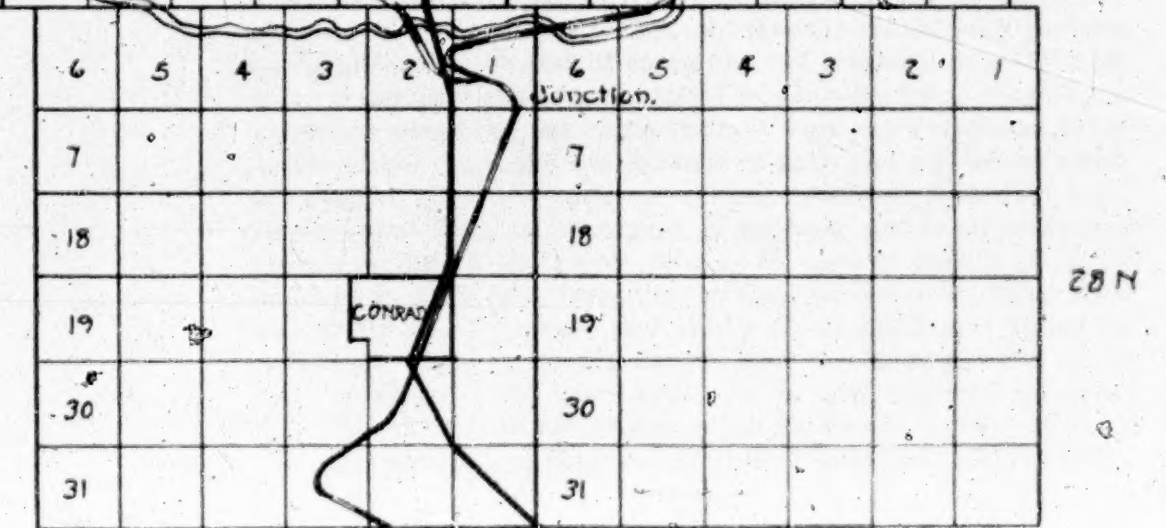
93 • *Duly sworn to by: W. F. Palin, Jurat omitted in printing.*



Map  
Showing  
THE MONTANA WESTERN RAILWAY CO.  
from  
Montana Western Junction to Valier, Mont.  
and  
SURFACED HIGHWAY  
from  
Conrad, Mont. to Valier, Mont.



Map  
Showing  
THE MONTANA WESTERN RAILWAY CO.  
from  
Montana Western Junction to Valier, Mont.  
and  
SURFACED HIGHWAY  
from  
Conrad, Mont. to Valier, Mont.





## [File Endorsement Omitted]

97

BEFORE THE INTERSTATE COMMERCE COMMISSION

**Return to Questionnaire—Filed May 9, 1949**

Comes now The Montana Western Railway Co., (hereinafter called the "Applicant") and submits its return to questionnaire under and pursuant to the Commission's General Rules and Regulations governing abandonment of railway lines as follows:

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**1. Complete statement of the purpose of the application.**

*Answer.* This application is made for the purpose of abandoning the entire line of the applicant extending from its junction with the Great Northern Railway Company located in the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section One (1) in Township Twenty-eight (28) North, Range Three (3) West, Montana Principal Meridian, three and two tenths (3.2) miles north of Conrad, Montana, measured along the center line of the Great Northern Railway, to its terminus located in the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Thirty-Three (33) Township Thirty (30) North, Range Five (5) West, Montana Principal Meridian, together with all side tracks, spur tracks, buildings and all appurtenances including equipment.

As reasons why the proposed abandonment should be permitted, Applicant states that there is no reasonable chance of operating its railroad without loss, either now or in the foreseeable future; and that continued maintenance and operation of its railway, either in whole or in part, are uneconomical, and are not warranted by present or prospective traffic; and that the continued imposition on Applicant of the cost of continued rail service on its said railway, or any part of the same, would be a burden upon it and upon interstate commerce, not commensurate with any benefits accruing to the public from the continuance of such rail service or which is required by public convenience and necessity. Applicant says, further, that for some years past, it has been able to maintain and operate its said railway only because of sums of money advanced and lent to Applicant, from time to time, by Great Northern Railway Company, the owner and holder of all the Bonds issued by Applicant, which are Bonds secured by a first mortgage lien on its property; and that Applicant is now indebted to Great Northern Railway Company, on its Bonds, in the principal amount of One Hundred Sixty-five Thousand Dollars (\$165,-

99

000.00), together with interest thereon at the rate of six per cent (6%) per annum from January 1, 1912; and that, in addition, Applicant owes to Great Northern Railway Company large sums of money (and interest thereon) for sums from time to time advanced and lent to The Montana Western Railway Co. to pay operating, maintenance, and other railway expenses. And Applicant says, further, that on or about January 21, 1949, Great Northern Railway Company notified Applicant that it would no longer advance or lend to Applicant further sums of money for maintenance or rehabilitation purposes; and that on or about February 28, 1949, Great Northern Railway Company (in addition) informed Applicant that it would advance or lend to Applicant no further sums of money for any purpose whatsoever. Applicant says, further, that as of the date of this Application, it had on hand only enough Cash of its own to pay the operating and maintenance expenses of its said railway for a period of about thirty (30) days.

2. *When, by whom, and for what purpose the line was constructed, and its proprietary history.*

*Answer:*

The Montana Western Railway Co.'s line was constructed in 1909 by The Montana Western Railway Co., a corporation incorporated under the laws of the State of Montana on March 19, 1909. Originally, the line was constructed from Conrad, Montana, to Valier, Montana, a distance of 20.24 Miles. In 1928, that portion of the line paralleling the tracks of the Great Northern Railway was abandoned from Conrad, Montana, North, for a distance of 2.98 miles; at which point a Junction was made with the Great Northern Railway. An agreement was executed, at that time, with the Great Northern Railway Company, whereby the Applicant was permitted to use the tracks of the Great Northern from the above-stated junction to Conrad, Montana; which agreement has been in force to date. Later, about October 5, 1940, the westerly end of the main line at Valier, Montana, was extended 0.25 miles. The resulting length of the main line, owned by the Applicant at the present time, is 17.51 miles.

In 1908, the Conrad Land and Water Company was incorporated for the purpose of constructing and colonizing an irrigation project consisting of 80,000 acres of land. The Montana Western Railway Co.'s line was constructed for the purpose of transporting construction materials, labor and settlers to the project. Since the time when the construction of the irrigation system was completed, the line has been used prin-



cipally for transporting materials and supplies to the settlers and carrying agricultural produce from the project to market.

3. *A copy of the Applicant's general balance sheet of the latest date available, and a copy of the Applicant's income account for each of the last five calendar years, and for that portion of the current year for which the information is available.*

*Answer:*

See Exhibits A and B, attached hereto.

4. *The present state of maintenance of the line.*

*Answer:*

As stated in answer to Question No. 2, the line was originally constructed for transportation of construction materials and labor. It was not built according to accepted standards for economical maintenance. Except where fills were required for crossing depressions or establishing a serviceable grade, the line was laid on the ground with practically no grading. All cuts are only wide enough to permit laying of the track. As a result, drainage is nil on the greater portion of the line. Fifty-eight pound and sixty-pound relay rail are laid on 55,000 No. 3 untreated cross ties. The result of the lack of drainage is shown in the rapid deterioration of ties, and the impossibility of keeping the track leveled and lined. There is practically no ballast. All structures are in good condition, except a pile bridge over the Dry Fork of the Marias. This bridge will need replacement in the near future.

Thru heavy expenditures for maintenance, the line has been kept in fair condition for the traffic available. To rehabilitate the line by widening the cuts, placing ballast, and providing proper drainage, would cost more than the income from the present or foreseeable future traffic would permit.

5. *The estimated salvage value of the line, with general statement of the basis of the estimate.*

*Answer:*

The estimated net salvage value is \$40,000.00, exclusive of land value of \$1,643.00; or a total net salvage value of \$41,643.00. This estimate is based on current prices of recoverable materials and buildings.

6. *The names of all railroads with which the line connects for interchange of traffic and the points of such interchange.*

*Answer:*

The Montana Western Railway Co.'s line connects with the Great Northern Railway at Conrad, Montana. This is the only line with which connection is made, and Conrad, Montana, is the only point of interchange.

7. *A brief description of present train service on the line, and of important changes made in the past five years.*

*Answer:*

Train service is rendered by a mixed train, which makes a round trip daily, except Sundays. The traffic handled consists of passengers, U. S. Mail, L.C.L. and Carload Freight. This service has been continuous for the past five years. Several attempts have been made to decrease the service commensurate with the traffic and revenue involved, but it was not possible to obtain the services of qualified employees on a part-time basis. Due to 3.2 miles of the Great Northern Tracks being used, by the Applicant, it is necessary that Trainmen and Enginemen pass an examination on the rules of that line and have sufficient experience to qualify as Great Northern Employees.

8. *The names of all stations of the line, stated in order with milepost numbers, with approximate population of each, and the authority for the information, showing for each place the names of all other railroads by which it is served or its distance by highway from the nearest other railroad. Distinguish non-agency stations.*

*Answer:*

Station	Rail dist. from Conrad, Mont. (Miles)	M.P.	Pop. per unofficial census 1949	Agency or Non-Agency	Dist. via High- way to Conrad agency, nearest Ry. Station
# Conrad, Mont.	0.00	—3.33	2,000	Agency	0.00
* MW Junction	5.33	0.00	00	Non-agency	3.00
* Manson, Mont.	7.28	4.00	10	" "	8.00
* Williams, Mont.	13.28	10.00	11	" "	16.00
Valier, Mont.	20.18	16.85	750	Agency	23.00

# Conrad is served by the Great Northern Railway Company.

\* Small station building, only, at Manson and Williams. No other station facilities at these points. Telephone booth, only, at Montana Western Junction.

9. *The approximate population of the territory served by the line, explaining how the limits of this territory are defined.*

*Answer:*

The approximate area served by the Applicant's line is 553 square miles. This area is bounded on the north by Two Medi-

cine River, Birch Creek and the Marias River; on the east by a line approximately along the east line of Range 3 West M.P.M.; on the south by the Dry Fork of the Marias and the Township Line between Township 27 and 28 North; and on the west by Birch Creek to crossing of Federal Highway No.

103 89, thence north along highway to its crossing over the Fisher Canal of the Blackfeet Indian Irrigation System, thence easterly and northerly along said Fisher Canal to the east one quarter ( $\frac{1}{4}$ ) corner of Section 15, T 31 No. R 7 W., M.P.M., thence north along said Section Line to Two Medicine River or point of beginning. The population included in this area is approximately 2,000, as established by an unofficial census based on the Pondera County School census, records of the Pondera County Assessors Office, and personal interviews. See attached Exhibit C, showing boundary of territory served.

10. *A detailed statement of the location and nature of the highways available for movement of the traffic now handled by the line and of the Common Carrier, Truck and Bus Service on such highways, if any.*

*Answer:* (See Exhibit C)

Federal Highway No. 89, an oiled-surface highway, passes northwesterly from Great Falls, Montana, thru Dupuyer, Montana, an inland town, crossing the west end of the Applicant's territory, to its junction with Federal Highway No. 2, three miles east of Browning, Montana. Federal Highway No. 91, an oiled-surface highway, passes west and north from Great Falls, Montana, thru Conrad, Montana, the easterly terminus of the Montana Western Railway, and thence north about 5 (see record p. 102) miles east of the east boundary of the territory of the Applicant's line, to Shelby, Montana, where it crosses Federal Highway No. 2.

The abandonment proposed would not adversely affect Conrad, Montana, the eastern terminus of the Montana Western Railway. Very little material and supplies (transported by the Applicant's line) originates in Conrad. This city is served by the Great Northern Railway Company's line and Highway No. 91.

Manson, Montana is served by a graveled highway, for  $2\frac{1}{2}$  miles east, to Highway No. 91; thence south about  $4\frac{1}{4}$  miles to Conrad, or north about  $21\frac{1}{2}$  miles to Shelby, on oiled-surface Highway No. 91.

Williams, Montana, is served by two outlets in addition to the Applicant's line. First, a graveled highway runs North 2 miles to an oiled-surface highway; thence east on oiled-surface highway, 9 miles to Highway No. 91; thence north about 17 miles, to Shelby, Montana, and south about 9 miles to Conrad, Montana. Second, east and south on graveled highway thru Manson, Montana,  $11\frac{1}{2}$  miles, to Highway No. 91; thence north, about  $21\frac{1}{2}$  miles, to Shelby, Montana, and south about  $4\frac{1}{4}$  miles, to Conrad, Montana.

- 104 Valier, Montana, is served by an oiled-surface highway, 14 miles east to its intersection with Highway No. 91; thence north about 17 miles to Shelby, Montana, or south about 9 miles to Conrad, Montana.

There are no Common Carrier truck and/or buses serving the stations on the Applicant's line, except the station of Conrad, Montana, which has been described heretofore. There is truck and bus service, daily, on Highway No. 91, running 5 (see p. 103 record) miles east of the Applicant's territory; and bus service, daily, on Highway No. 89, which crosses the west portion of the territory of this line.

Attached Exhibit C shows more clearly the highways described above.

11. *The nature of the Industries in the tributary territory (such as farming, mining, lumbering, manufacturing, etc.), how long established, and the extent to which each is dependent upon the line for transportation. State location and other facts concerning the most important plants served.*

*Answer:*

*Livestock and farming.*

Included within the territory of the Applicant's line, there are about 135,000 acres of dry farm land, 47,400 acres of irrigated land, and 171,520 acres of grazing land or range. Raising of livestock was the major industry when the Applicant's line was constructed. Homesteading of the dry land started in 1909. Colonization of the irrigated land started during the same year; but actual irrigation farming was not started until 1912, except to a very limited extent. At the present time, the livestock industry has shrunk to a small percentage of its former importance. The greater portion of the products of this industry are trucked to markets off the Applicant's line. For the past five years, products of agriculture moved off the line have constituted 97% of the total tonnage so moved, and 91% of all carload tonnage inbound and outbound. The products



consist of wheat, barley, oats, flax, mustard seed, and a small tonnage of sugar beets. As has been the case with livestock some tonnage of agricultural products was hauled out of the Applicant's territory by truck during 1948. The fact that trucks are being used, at present, indicates that the products of the agricultural and livestock industries can be handled by trucks instead of by rail.

105 *Industries and Mercantile Establishments located on Applicant's Line.*

*Maxson, Mont.*, is a prepay station. *One mustard seed elevator, a private residence, and a rural school*, account for its existence.

*Williams, Mont.*, a prepay station, consists of *two grain elevators, one bulk-retail petroleum products station, and one U. S. Post Office* in a private residence.

*Valier, Montana*, is the trading point for a large portion of the Applicant's territory. This town is the headquarters for the Applicant, and for The Valier Company, the predecessors of which promoted, constructed and colonized the irrigation project, starting about the year 1909 when the town was founded. Business institutions (in addition to the two mentioned above) are listed as follows:

Airport (training station).....	1
Apartment Houses .....	3
Bakeries .....	1
Bank .....	1
Bulk Petroleum Plants.....	4
Creameries .....	1
Drug Stores .....	1
Garages .....	6
Grade Schools .....	1
Grain Elevators .....	5
Hotels .....	1
High Schools .....	1
Implement Houses (agricultural).....	1
Lunch Counters .....	2
Lumber Yards (retail).....	2
Mercantile Houses (retail).....	4
Newspaper and printing plant.....	1
Pasteurizing Plant .....	1
Saloons and Beer Halls .....	3
Saw Mills .....	1
Service Stations .....	4
United States Post Office .....	1

12. *The passenger traffic handled on the line in each of the last two calendar years and for that part of the current year for which the information is available giving separately the number of local and connecting-line passengers (if the latter designation is applicable) and the revenue from each class.*

106 *Answer:*

The Montana Western Railway Co. never has handled, and does not handle, interline passenger business. *Passenger traffic covers only transportation over the line of the Applicant.* The following table gives the passenger traffic for the past five years, and to April 1, 1949:

Year	Revenue Passengers Carried	Revenue Passenger Miles	Passenger Revenue
1944	1,412	26,707	\$559.00
1945	1,493	28,572	\$551.00
1946	1,263	24,064	\$458.00
1947	1,190	21,135	\$414.00
1948	753	13,745	\$259.00
Jan. 1st to Mar. 31st 1949	141	2,110	\$ 41.00

Thru an agreement with the U. S. Post Office Department, dated April 23, 1948, Applicant furnishes mail service to Williams and Valier at a minimum rate of pay of \$2,837.71 per annum. In addition to this compensation, the government also pays for delivery of the mail from the Valier Depot to the Post Office. Several times attempts have been made to cancel this agreement, and transport the mail in by truck. Hence, abandonment of the line would not adversely affect this item of traffic.

The Applicant has no agreement with the Railway Express Agency. All Express shipments received over the Great Northern Railway at Conrad, Montana, and consigned to points on the Applicant's line, are carried as freight from Conrad to destination.

Cream and milk shipments, which are few and insignificant, are transported as freight. This traffic, including butter from the local creamery, is practically all transported by truck.

13. *The freight tonnage handled by the line for the last two calendar years and for that part of the current year for which the information is available, showing the number of cars and the tonnage of carload freight, classified by principal commodities, and the tonnage of less-than-carload*

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freight. Show in separate statements (a) local freight originated at and destined to points on the line, (b) freight moved between points on the line and points beyond it, and (c) freight neither originated at nor destined to points on the line (overhead or bridge traffic).

Answer:

The freight tonnage handled by the Applicant's line during 1947, 1948, and the period Jan. 1 to March 31, 1949, respectively, is as follows:

(a) Local freight originated at and destined to points on the line

Commodity	Calendar Year 1947	Calendar Year 1948	January 1 to Mar. 31, 1949, Inc.
Carload	None	None	None
L.C.L. Tons			
2000#	47	39	23

(b) Freight moved between points on the line and points beyond

Commodity	Calendar Year 1947		Calendar Year 1948		January 1 to Mar. 31, 1949, Inc.	
	Cars	Tons	Cars	Tons	Cars	Tons
Products of Agriculture	762	39,464	459	23,071	90	4,128
Animals & Products	46	497	27	265	1	12
Products of Mines	7	233	13	387	1	48
Products of Forests	9	264	5	155	3	104
Manufactured & Miscel.	59	1,326	36	674	4	27
Total C.L. Traffic	883	41,784	540	24,552	99	4,319
L.C.L. Traffic	.....	760	.....	663	.....	144
Total all Traffic	.....	42,544	.....	25,218	.....	4,462

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(c) Freight neither originated at, nor destined to, points on the line (Overhead or Bridge Traffic).

This is not an "Overhead or Bridge" line.

14. (1) If the line to be abandoned is less than the entire mileage operated by the applicant, a statement showing the effect of the proposed abandonment on the net railway operating in-

come of the Applicant. The statement should include for each of the last two calendar years and for that part of the current year for which the information is available.

Answer:

The line proposed to be abandoned by the applicant is the entire physical mileage of its line; and Applicant also wishes to abandon operation over three and two-tenths miles of line owned by the Great Northern Railway, over which Applicant has had trackage rights.

14. (2) If the Applicant's line is operated as part of a system under common control and management, a statement for the same period as required in Paragraph (1) showing the effect of the proposed abandonment on the net railway operating income of the system and the unit members thereof. This statement should show the revenues accruing to the system and its unit members from traffic moving to and from the line proposed to be abandoned and the costs of handling such traffic. The method of determining such cost should also be shown.

Answer:

The Applicant's line is not operated as part of a system under common control and management.

- 109 15. If the volume of freight or passenger traffic of the line has decreased during recent years, any reasons therefore.

Answer:

Passenger traffic on the Montana Western Railway Co.'s line has been adversely affected by passenger automobiles and surfaced highways. The line's revenue from this source has gradually decreased during the past 20 years, as shown in the following tables:

Year	Rev. Pass. Carried	Pass. Rev.	Year	Rev. Pass. Carried	Pass. Rev.
1924	5,831	\$3,637.00	1944	1,412	\$559.00
1925	6,425	\$3,914.00	1945	1,493	\$551.00
1926	3,991	\$2,529.00	1946	1,263	\$458.00
1927	5,408	\$3,441.00	1947	1,190	\$414.00
1928	3,275	\$2,197.00	1948	753	\$259.00

From the above table it is apparent that progress in the field of automobile transportation has rendered unnecessary the passenger accommodations offered by the Applicant; and that public convenience and necessity no longer require that they be continued.



Freight traffic has decreased (except as to Products of Agriculture, and animals and Products), since 1928. This change is shown in the following tables of tonnage carried:

	1928 Tons	1929 Tons	1930 Tons	1946 Tons	1947 Tons	1948 Tons
Products of Agriculture	37,166	24,006	*22,613	32,708	39,464	e23,071
Animals & Products	474	726	941	472	497	265
Products of Mines	2,638	2,362	2,204	606	233	387
Products of Forests	1,301	1,384	684	186	264	155
Mfg. & Misch.	3,002	3,328	1,769	956	1,326	674
All L.C.L.	1,526	1,626	1,471	664	760	663
Totals	46,107	33,432	29,682	35,592	42,544	25,218

110 \*Note—Tonnage shown in the Animal Report to the Interstate Commerce Commission, for the year 1930, is in error, as shown by a check of the tonnage for that year. The above is the corrected total.

eNote—23,071 tons does not include that portion of the 1948 crop amounting to an estimated 14,700 tons held in storage in elevators and on farms, on even date, under Commodity Credit Loans and Purchasers Agreements. This grain is expected to move upon termination of Loan Agreements, April 30, 1949.

The decreases shown in the last four items in the above table have been caused by—

(a) As to the Products of Mines. Natural gas and butane have been replacing coal for fuel.

(b) As to the Products of Forests, Mfg. & Misch. and L.C.L. Trucks, passenger cars, and surfaced highways. Altho no commercial truck and bus lines serve the Stations on the Applicant's line, there are wholesalers' trucks, privately-owned trucks, and passenger cars, which carry the tonnage no longer offered to this line for shipment.

16. If the line is operated as a joint facility and abandonment of the Applicant's operation only is proposed, state fully the facts as to operation by others and the extent to which it will supply the place of the operation it is proposed to abandon.

Answer:

The line is not operated as a joint facility.

17. State what effort has been made to dispose of the line so to insure its continued operation, and what, if any, transportation service will remain or may be substituted for that proposed to be discontinued.

*Answer:*

Several attempts have been made to deed the line to the Great Northern Railway Company, which owns all the First Mortgage Bonds of Applicant, in lieu of foreclosure. For instance, Applicant made this offer on or about February 23, 1942, and on or about February 28, 1949. All offers were declined; and recently Great Northern Railway Company expressed to Applicant its intention not to acquire the railroad by foreclosure, as a going road.

If service is discontinued, transportation of tonnage now handled by the Applicant will be dependent upon privately-owned and Common Carrier trucks and passenger automobiles.

18. *A Summary of the reasons for the application.*

- (a) Available traffic at the present time, or in the foreseeable future, is insufficient to produce the revenue required to cover the cost of operation.
- (b) The financial situation of the Applicant is so adverse, that funds to meet payroll and other obligations will not be available for any extended period of time.
- (c) Due to the conditions stated in (a) and (b), it is impossible to obtain assistance from any source known to the applicant.
- (d) To continue to operate will require a comparatively heavy rehabilitation program, in the near future, which would be beyond the financial ability of the Applicant to undertake.

*Sources of Information*

Annual Reports submitted to the Interstate Commerce Commission.

Records of the Applicant.

Records of the County Superintendent of Schools and Assessor of Pondera County.

Personal knowledge of employees.

Respectfully Submitted,

THE MONTANA WESTERN RAILWAY CO.

By W. F. PALIN

Vice President

Exhibit "A"—To Return to Questionnaire

THE MONTANA WESTERN RAILWAY CO.

GENERAL BALANCE SHEET

MARCH 31, 1949

ASSETS

Investments:

701	Road and equipment property:	
	At beginning of year	\$279,006.82
	Current year	.....
	Total	279,006.82

702 1/2	B Donations and Grants	448.25
702 1/2	C Accrued Depreciation—Road	15,287.50
702 1/2	D Accrued Depreciation—Equipment	21,665.96
	Investment in transportation property less recorded depreciation	241,605.11
705	Miscellaneous physical property	1,292.26
	Total investments	242,897.37

Current Assets:

708	Cash	2,413.15
711	Special deposits	.....
714	Net balance receivable from agents and conductors—	
	Due from Agent—Valier	112.07
	Due from Agent—Conrad	26.00
	Due from conductors	.....
715	Miscellaneous accounts receivable—	
	Claim account—G. N. Ry. Co.	3.58
	Bills collectible	603.56
716	Material and supplies	6,287.79
718	Accrued accounts receivable	.....

Total Current Assets

9,440.15

Deferred Assets:

722	Other Deferred Assts—	
	Meter deposits	18.00
	Salvage to be recovered	.....
	Total Deferred Assets	18.00

Unadjusted Debits:

727	Other unadjusted debits	
	Unclaimed freight	18.96
	Freight in transit	.....

Total Unadjusted Debits

18.96

Total Assets

252,374.48

LIABILITIES

Stock:

751	Capital stock	\$200,000.00
	Less amount unpaid by Valier-Montana Land & Water Company	50,000.00
	Total	150,000.00

Long-Term Debt:

755	First Mortgage 6% Gold Bonds	165,000.00
756 1/2	Equipment obligations	8,000.00
	Total Long-Term Debt	173,000.00

Current Liabilities:

760	Audited vouchers (G. N. Ry. Co.)	.....
761	Miscellaneous accounts payable	6,877.62
	Drafts payable—G. N. Ry. Co.	310.99
	Claims payable—G. N. Ry. Co.	.....
	G. N. Ry. Co. Current account	124,412.74
764	Unmatured interest accrued	.....
766	Accrued accounts payable	65,416.48
767	Taxes accrued	3,319.52

Total Current Liabilities

200,337.35

Deferred Liabilities:

769 1/2	Interest in default	368,775.00
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Unadjusted Credits:

778	Other companies and individuals	.....
	Total Unadjusted Credits	.....

Surplus:

784	Unearned Surplus	.....
785	Earned Surplus—Appropriated	.....
786	Earned Surplus—Unappropriated	.....
	Balance Dec. 31, 1948	626,331.92
	Profit and Loss Current Year	.....
	Balance transferred from income	13,395.95
607	Miscellaneous credits	.....
621	Miscellaneous debits	10.00

Total earned surplus unappropriated

639,737.87

Total surplus

639,737.87

Total Liabilities

252,374.48



Exhibit "B"—To Return to Questionnaire

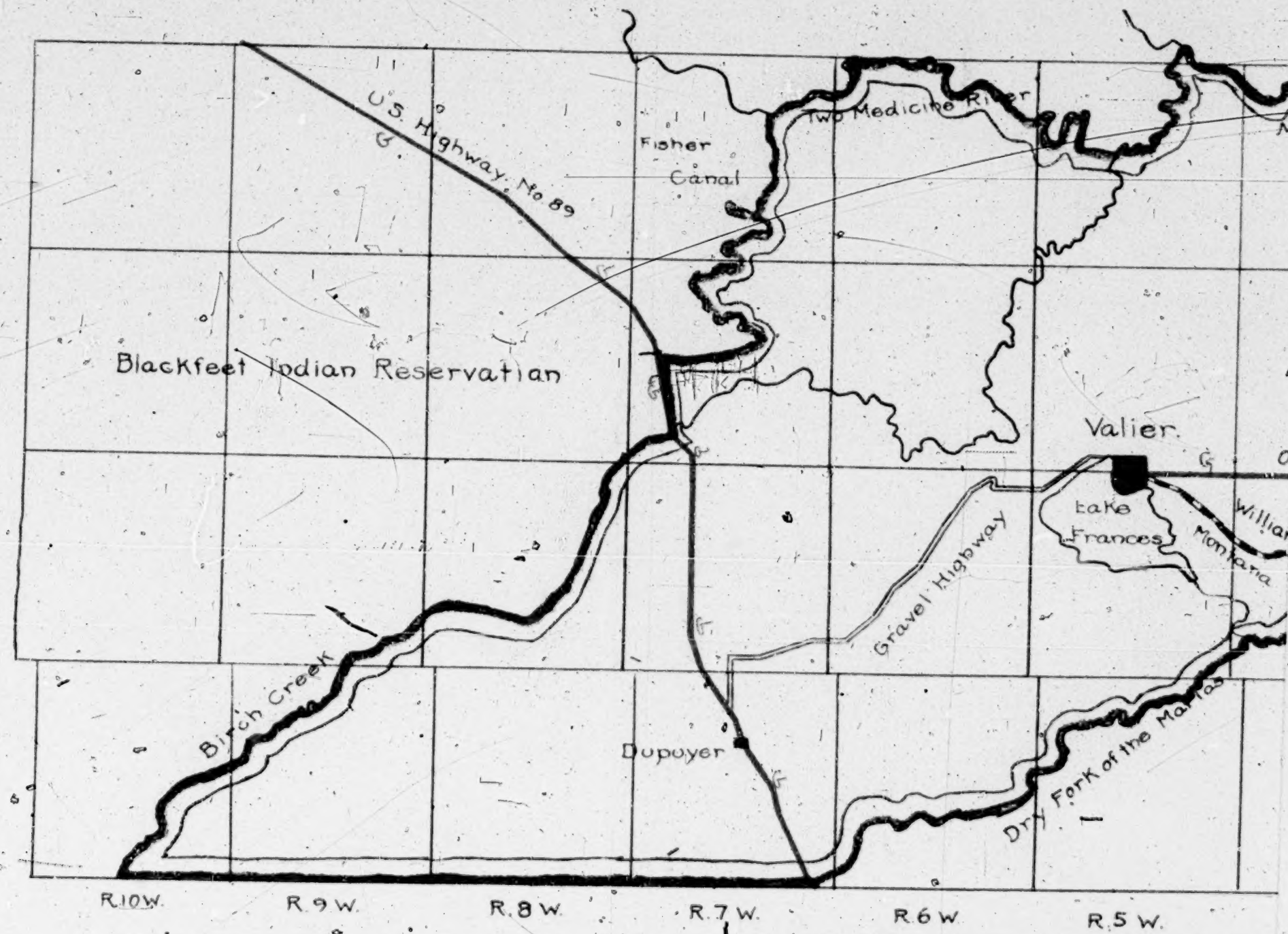
THE MONTANA WESTERN RAILWAY CO.

INCOME ACCOUNT

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	1944	1945	1946	1947	1948	Jan. 1st to March 31st 1949
<b>I—Operating Income:</b>						
<b>A. Railway Operating Income—</b>						
501—Railway operating revenues	\$48,442	\$32,950	\$48,184	\$66,505	\$47,845	\$ 9,360
531—Railway operating expenses	43,109	44,964	47,948	69,958	68,635	18,586
Net Revenue from Railway Operations	5,333	12,014	236	3,453	20,790	9,226
532—Railway Tax Accruals	4,307	4,524	5,472	7,054	6,341	1,571
Railway Operating Income	1,026	16,538	5,236	10,507	27,131	10,797
<b>B. Rent Income:</b>						
Total Rent Income	0	0	0	0	0	0
<b>C. Rents Payable:</b>						
536—Hire of freight cars	193	190	160	523	440	156
537—Rent for locomotives	0	0	70	3,640	0	0
Total Rents Payable	193	190	230	4,163	440	156
Net Rents	193	190	230	4,163	440	156
Net Railway Operating Income	833	16,728	5,466	14,670	27,571	10,953
<b>II—Other Income</b>						
510—Miscellaneous rent income	12	192	251	261	417	11
519—Miscellaneous income	0	11	30	31	47	24
Total Other Income	12	203	281	292	464	35
Total Income	845	16,525	5,185	14,378	27,107	10,918
<b>III—Miscellaneous Deductions from Income:</b>						
544—Miscellaneous tax accruals	0	0	0	0	12	3
557—Delayed income debits	0	2,550	0	0	0	0
Total Miscellaneous Deductions	0	2,550	0	0	12	3
Income Available for Fixed Charges	845	19,075	5,185	14,378	27,119	10,921
<b>IV—Fixed Charges:</b>						
546—Interest on funded debt						
(b) Interest in default	9,900	9,900	9,900	9,900	9,900	2,475
547—Interest on unfunded debt	3	0	0	0	0	0
Total Fixed Charges	9,903	9,900	9,900	9,900	9,900	2,475
Income After Fixed Charges	9,058	28,975	15,085	24,278	37,019	13,396
<b>V—Contingent Charges:</b>						
Total Contingent Charges	0	0	0	0	0	0
Net Income After Fixed Charges and Other Deductions	9,058	28,975	15,085	24,278	37,019	13,396
<b>VI—Disposition of Net Income:</b>						
Total Appropriations of Income	0	0	0	0	0	0
Balance of Income Transferred to Earned Surplus	9,058	28,975	15,085	24,278	37,019	13,396



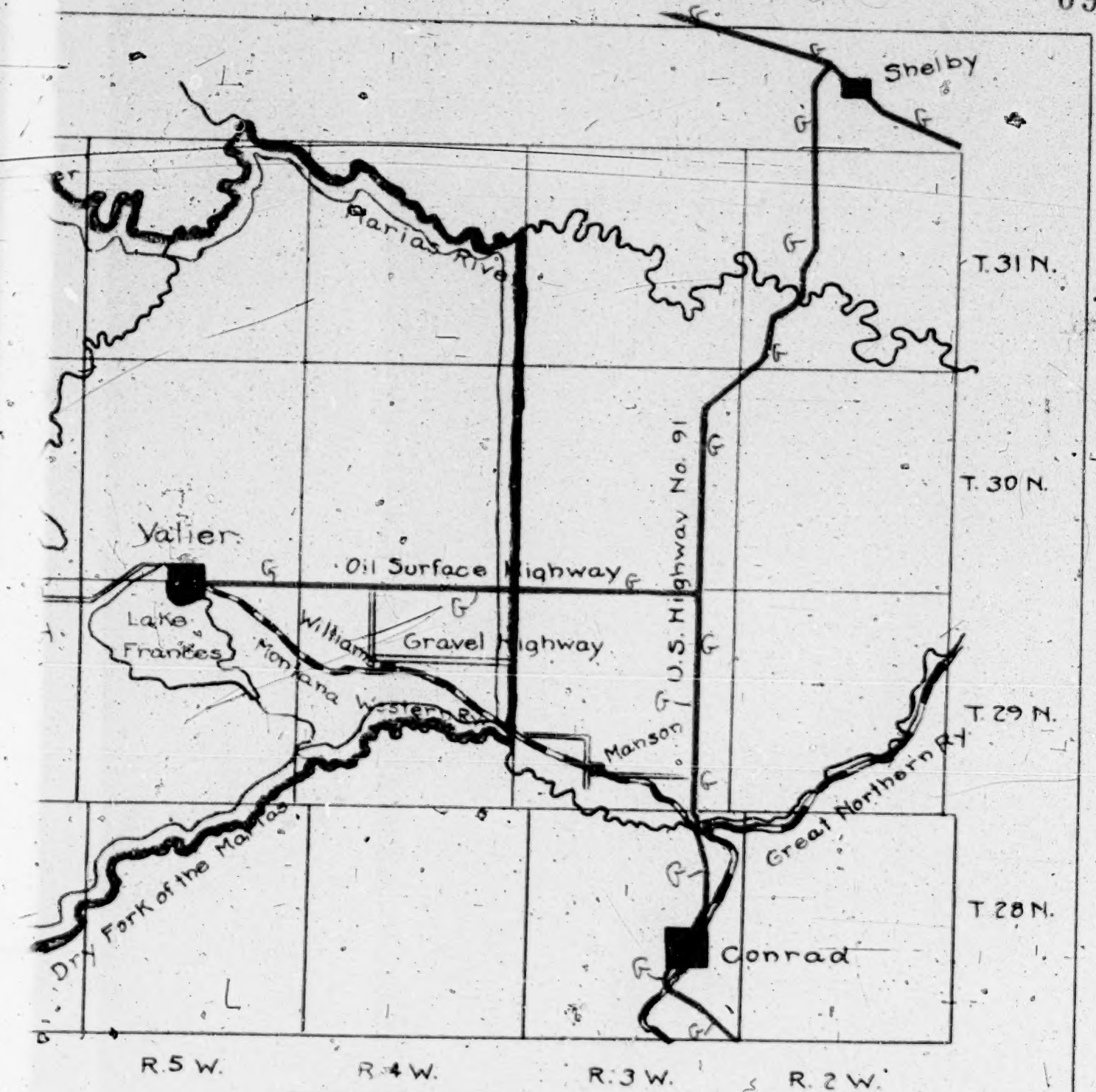


Legend —

Boundary M.W. Ry. Territory

Oil Surfaced Highways

← (Green-G)



Map

Showing Montana Western Railway Territory and Principal Highways therein.

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BEFORE THE INTERSTATE COMMERCE COMMISSION

**Transcript of Hearing**

High School Gymnasium,  
Valier, Montana,  
July 11, 1949—9:30 A. M.

BEFORE:

C. A. BERNHARD, Examiner.

**Appearances:**

ART JARDINE, First National Bank Building, Great Falls, Montana, appearing for the Applicant, Montana Western Railway Co., Valier, Montana;

LESTER H. LOBLE, Helena, Montana, appearing for the Protestant, Valier Community Club, Valier, Montana;

EDWIN S. BOOTH, State Capitol, Helena, Montana, Secretary and Counsel of, and appearing for, Montana Board of Railroad Commissioners, Helena, Montana, Protestant.

119 H. W. ANSELL, Box 2010, Salt Lake City, Utah, appearing for Protestant, Utah-Idaho Sugar Company, Salt Lake City, Utah;

LOUIS E. POPPLAR, Office of Attorney General, Helena, Montana, appearing for Protestant, State of Montana;

J. P. SEIFERT, Conrad, Montana, President of, and appearing for, Protestant, Pondera County Canal & Reservoir Company, Conrad, Montana;

RALPH C. BRICKER, Great Falls, Montana, appearing for Congressman Wesley A. D'Ewart, and Senator Zales N. Eaton, and for himself, personally, as Protestants;

HORACE F. CASEY, State Capitol, Helena, Montana, appearing for Protestant, State Board of Railroad Commissioners, Helena, Montana;

M. C. JOHNSON, Valier, Montana, appearing for Protestant, Board of County Commissioners, Pondera County, Montana, Conrad, Montana;

ROSCOE C. LOTS, 314 Fifth Avenue, North, Great Falls, Montana, appearing for Protestant, Brotherhood of Railroad Trainmen.

**Proceedings****Colloquy and Preliminary Motions**

122 Examiner Bernhard: The Interstate Commerce Commission has set for hearing at this time and place Finance Docket No. 16515, the Application of the Montana Western Railway Co. for a certificate of public convenience and necessity permitting abandonment of its entire line of railroad extending from a point



about 3.2 miles north of Conrad to Valier, approximately 17.51 miles, all in Pondera County, Montana.

Who appears for the Applicant?

Mr. Jardine: Art Jardine, Great Falls, Montana.

Examiner Bernhard: Have you been admitted to practice before the Interstate Commerce Commission?

Mr. Jardine: Yes; I have, Mr. Examiner.

Examiner Bernhard: I will now take the appearances of other counsel in the case. Will you please state your name and address and whom you are appearing for?

Mr. Loble: Lester H. Loble, Attorney at Law, Helena, Montana.

Examiner Bernhard: You have been admitted to practice before the Commission?

Mr. Loble: I was heretofore admitted, and I have an application before the Commission now.

Examiner Bernhard: It is now pending before the Commission?

Mr. Loble: Yes, in connection with his case I have made a special application. I am appearing for the Valier Community Club.

123 Examiner Bernhard: Won't you please enlarge on that a little?

Mr. Loble: Yes, Mr. Examiner. The Valier Community Club is an organization in this county of approximately two hundred members, which has been organized for some time past, and was not organized specifically for this purpose. It is a club composed of business men in the City of Valier and farmers in this vicinity. It is a group devoted to the service of this county and this community and the State, and is vitally interested, together with its water users, in this proceeding.

Examiner Bernhard: Appearing in protest against the application?

Mr. Loble: Appearing in protest,—in furtherance of the protest heretofore filed, which I believe is in your files, by this Club, and adding to the protest this: That the protest is further based on the ground that public necessity and convenience requires the continuance of the operation of this railroad.

Examiner Bernhard: Very well. What is the next appearance?

Mr. Popplar: Louis E. Popplar, Assistant Attorney General of the State of Montana, Helena, Montana. I would like to put in the appearance of Arnold H. Olson, Attorney General of the  
124 State of Montana.

Examiner Bernhard: If he is not here, I don't think we had better take his appearance. You are appearing in support of the Attorney General's protest against the granting of this application?

Mr. Popplar: Yes, Mr. Examiner.

Examiner Bernhard: You have been admitted to practice before the Commission, have you?

Mr. Popplar: No, sir; I haven't.

Examiner Bernhard: Have you appeared as counsel for any parties before the Commission in the last year?

Mr. Popplar: No, I haven't.

Mr. Booth: I will enter the appearance of Horace F. Casey, Member of the Board of Railroad Commissioners of the State of Montana, and Edwin S. Booth, Secretary-Counsel of the Board of Railroad Commissioners, appearing in support of the protest of the Board of Railroad Commissioners filed on April 14th, 1949. I have been admitted to practice before the Commission. The appearance of the Board of Railroad Commissioners of the State of Montana is made by virtue of the provisions of the state law making it a duty of the Board to appear before the Interstate Commerce Commission in matters of interest to the people.

Examiner Bernhard: Mr. Casey is also here, is he?

Mr. Booth: Yes.

125 Mr. Casey: Mr. Examiner, I asked counsel to make my appearance for the purpose of saving time. I have entered a personal appearance sheet there, and I am here in person.

Mr. Ansell: H. W. Ansell, General Traffic Manager of the Utah-Idaho Sugar Company, Salt Lake City, Utah. We operate a factory at Chinook, Montana. We are here in support of the protests to the granting of the application.

Examiner Bernhard: You are a practitioner before the Interstate Commerce Commission?

Mr. Ansell: Yes, Mr. Examiner.

Examiner Bernhard: Are there any other appearances?

Mr. Lots: R. C. Lots, Great Falls, Montana, appearing for the Brotherhood of Railroad Trainmen. I am State Chairman of that organization. Protest has been filed in Washington. I protest for Labor.

Examiner Bernhard: You have been admitted to practice before the Interstate Commerce Commission?

Mr. Lots: No, I haven't.

Examiner Bernhard: You are not an attorney?

Mr. Lots: No.

Examiner Bernhard: But you are appearing in your official capacity for this organization?

Mr. Lots: Yes.

Examiner Bernhard: All right. Are there any other appearances?

126 Mr. Loble: There is one other, yes,—the Pondera County canal and Reservoir Company. These gentlemen have just come in. I am having them sign their appearance blank now.

Mr. Bricker: Ralph C. Bricker, Great Falls, Montana, appearing



at the request of Wesley A. D'Ewart, Congressman, Second District of Montana, and at the request of Zales M. Ecton, Senator from Montana, and personally, as a business man doing business in this trade territory.

Examiner Bernhard: You are not an attorney?

Mr. Bricker: No, sir.

Examiner Bernhard: And you are not a practitioner before the Interstate Commerce Commission?

Mr. Bricker: No, sir.

Mr. Seifert: J. P. Seifert, Conrad, Montana. I am appearing as President of the Pondera County Canal and Reservoir Company and protesting the abandonment of the railroad.

Mr. Loble: You are water users?

Mr. Seifert: Yes.

Mr. Loble: The County Commissioners want to appear, but I don't know if they have filed an appearance or not.

Mr. Johnson: M. C. Johnson, member of the Board of County Commissioners here of this county. The Board of County Commissioners of this county desire to appear in protest of the  
127 granting of the application.

Examiner Bernhard: All right. Now, are there any petitions or motions?

Mr. Loble: Yes. The protesting community, the Valier Community Club at the time of the opening of this hearing moves for the right to reserve,—moves for the privilege to reserve the right to petition for a further hearing within twenty days from the commencement of this hearing.

Examiner Bernhard: We will grant you that.

Mr. Loble: Sir?

Examiner Bernhard: We will grant your motion.

Mr. Loble: Thank you.

Mr. Booth: At this time, and before the commencement of the hearing, the Board of Railroad Commissioners of the State of Montana desires to file this written motion objecting to the jurisdiction of the Interstate Commerce Commission. I am handing you the original motion, and six copies, for the Commission.

Examiner Bernhard: You say you are objecting to the jurisdiction of the Interstate Commerce Commission?

Mr. Booth: Yes, Mr. Examiner. This motion is based primarily on the case of Texas versus Texas & Eastern Railroad, appearing in 258 U. S. 204, and is based on the premise that the application being for the abandonment of the entire railroad, that it is a matter for the State regulatory commission to determine. I may  
128 state at this time that the Montana Western Railway Company has filed application with the Board of Railroad Commissioners of the State of Montana, which is substantially in agree-

ment with the application originally filed before the Interstate Commerce Commission in March of 1949. That application has not yet been set for hearing, and no action has been taken by the Board of Railroad Commissioners upon it.

Examiner Bernhard: Will you enlarge a little more on the supporting reasons for your motion?

Mr. Booth: Yes, Mr. Examiner.

Examiner Bernhard: The application in this case states that the applicant is subject to the Interstate Commerce Commission Act?

Mr. Booth: That is correct, Mr. Examiner, and I think probably it will have to be admitted that the applicant is a railroad engaged in interstate transportation and comes under the Interstate Commerce Commission Act; however,—

Examiner Bernhard: Do you so admit?

Mr. Booth: However in the case of Texas versus Texas Eastern Railroad 258 U. S., 204, the Supreme Court of the United States took the position that where a railroad was located entirely within a single state, and where the application was to abandon the entire railroad as distinguished from a portion of the railroad, that the abandonment did not place any burden on the operation,—

129 did not place any burden on interstate commerce, and the Interstate Commerce Commission was without authority to order abandonment of the intrastate service. The Interstate Commerce Commission in that case did authorize the abandonment of the interstate and foreign commerce, and that portion was sustained by the Supreme Court. That rule has been followed consistently since it was decided in U. S. 258, and I refer particularly to 236 I. C. C., 265, Tonopah & Tidewater Railroad Company, Limited, an abandonment case; Death Valley Railway, Limited, an abandonment case, 170 I. C. C., 325; Batesville and Southwestern, an abandonment case, 170 I. C. C., 269; Dover and Southbound, abandonment, 170 I. C. C., 69; Sieveren and Knoxville, Railroad Company, abandonment, 187 I. C. C., 626. Those cases all recognize the basic rule established in 258 U. S., and the decisions of the Interstate Commerce Commission in following that,—the findings of the Commission have been in this general statement: "We find the present and future public convenience and necessity permits abandonment of operations,"—I am skipping part now,—"insofar as interstate and foreign commerce is concerned." And it is limited to that.

Examiner Bernhard: Well, I will over-rule your motion.

Mr. Loble: May I have,—the Valier Community Club desires to join its objection to the jurisdiction of the Interstate Commerce Commission as stated by Counsel for the Board of Railroad Commissioners of the State of Montana.

~~Examiner Bernhard~~: Maybe I had better hear from counsel for the applicant.

Mr. Jardine: I think the statement of counsel for the protestants clearly shows that the Interstate Commerce Commission has jurisdiction, at least insofar as the interstate commerce is involved, in this matter, and somebody has to start the proceedings, either this Commission or the Board of Railroad Commissioners of the state, and there isn't anything in any of the cases, as I understand them, that says you have to start with the State regulatory board first, or with the Interstate Commerce Commission first. As a matter of fact, when we filed the application with the State to abandon the railroad, we requested that the hearing of this matter be a joint hearing. Now, the state hasn't seen fit to conduct a joint hearing, which, of course, is well within its jurisdiction, but I don't think there is any question but what the Interstate Commerce Commission has full jurisdiction to determine, so far as they are concerned, whether this railroad should be abandoned or not.

Examiner Bernhard: I will over-rule the motion, and we will proceed with the hearing.

Mr. Booth: An exception, please.

Examiner Bernhard: The application in this proceeding, 131 and the return to questionnaire signed by the applicant are a part of the records. However, the persons making and verifying those instruments will be subject to cross-examination as to any phase of it. I understand he is here and will be offered at the proper time for any cross examination.

Lest I forget to state it, I will state at this time that in the event counsel for any reason desire to request any changes in the transcript, compliance should be had with Rule 90-B of the Rules of Practice of the Interstate Commerce Commission.

This will be a proposed report case.

I want to call to the attention of counsel for the applicant that the application requests authority to abandon the line of railroad from Valier to its junction with Great Northern Railway, which I understand is some few miles north of Conrad, and I note the application asks for authority to abandon operations over that part of the line,—over that line. It appears, however, that this railroad does operate under trackage rights of some kind between that junction point and Conrad, and the application is lacking, it seems, in not asking for authority to abandon its operations under those trackage rights between the junction and Conrad. If counsel for applicant desires to amend his application, in that case we will not require a formal amendment, but if he will state his 132 position on that for the record, we will consider it.

Mr. Jardine: We ask, Mr. Examiner, that the application and the return to questionnaire be amended to show that the



application, in addition to the application as made, requests the authority to abandon the rights, such as it has, to operate over the Great Northern Railway Company from Conrad to the junction, together with the operation of the railroad over those tracks, and its right so to do.

Examiner Bernhard: Its operation?

Mr. Jardine: From Conrad station on the Great Northern to the junction of the Montana Western, approximately three and two-tenths miles north of Conrad.

Mr. Loble: May I observe that from the questionnaire that operation is by virtue of a contract between the Montana Western Railway Company and the Great Northern Railway Company, and should the amendment be made, ought not the Great Northern Railway Company be a party to this proceeding?

Examiner Bernhard: What counsel counsel for the applicant have to say?

Mr. Jardine: I don't think it is necessary for the Great Northern Railway Company to be a party to the proceeding, for the reason the operation of the railway, the Montana Western, from Conrad to a point over the Great Northern Railway,—from a point at

Conrad to a point three and two-tenths miles north of

133 Conrad, is made simply by permission of the Great Northern Railway without any charge being made therefor, and if we operate,—if we were granted authority to discontinue operation of the Montana Western from Valier to that point approximately three and two-tenths miles north of Conrad, of course the permissive right would be of no value whatsoever in any event.

Examiner Bernhard: It doesn't seem to the Examiner that the Great Northern Railway Company need be made a party on that account. The applicant may proceed.

Mr. Jardine: Call Mr. Palin.

W. F. PALIN, was sworn as a witness and testified as follows:

#### Direct Examination

Q. (By Mr. Jardine:) You may state your name, please. A. W. F. Palin.

Q. And, Mr. Palin, what office do you have with the Montana Western Railway Company? A. Vice-president and Treasurer.

Q. And how long have you been an officer of that company? A. I became secretary in 1941, and in the spring of 1948 I became Vice-president and Treasurer.

Q. Are you also a director of the company? A. I am.

134 Mr. Jardine: Mr. Loble, and other counsel: Will you admit that the Montana Western Railway Company,—that a charter has been granted to the Montana Western Railway Company?



Mr. Loble: Yes, and that the articles of incorporation you have in your hands are the articles of incorporation.

Mr. Booth: We have no objection.

Mr. Jardine: We offer in evidence the articles of incorporation of the Montana Western Railway Company, and ask that it be marked as Applicant's Exhibit No. 1, for identification.

(The document referred to was marked Applicant's Exhibit No. 1, for identification by the Reporter.)

Mr. Jardine: We offer Applicant's Exhibit No. 1, so marked for identification, in evidence at this time.

Mr. Loble: We have no objection.

Mr. Booth: No objection.

Examiner Bernhard: Since there is no objection to this we might as well receive it.

Mr. Jardine: I beg your pardon?

Examiner Bernhard: The document just described is admitted in evidence as Applicant's Exhibit No. 1, there being no objection to it.

(Applicant's Exhibit No. 1, heretofore marked for identification, was received in evidence.)

Mr. Jardine: We at this time offer in evidence the certificate from the Secretary of State extending the corporate existence of the Montana Western Railway Company for a period of forty years from and after May 2nd, 1929.

(The document above referred to was marked Applicant's Exhibit 2 for identification, by the Reporter.)

Mr. Loble: We are familiar with the document, and have no objections.

Examiner Bernhard: Are there any objections to receiving Applicant's Exhibit No. 2 for identification in evidence?

Mr. Booth: We have no objection.

Examiner Bernhard: It may be received as Applicant's Exhibit No. 2.

(Applicant's Exhibit 2, heretofore marked for identification, was received in evidence.)

Mr. Jardine: At this time we offer in evidence the original mortgage from the Montana Western Railway Company to the Guranty Trust Company of New York, which mortgage was filed for record,—I will withdraw that,—which mortgage was, and is, dated January 1, 1912, and is given to secure the payment of one hundred and sixty-five thousand dollars in first mortgage bonds issued to the Great Northern Railway Company. The mortgage

was originally filed for record on April 11th, 1913, at nine o'clock A. M. in Teton County, Montana, and has been transcribed to the records of Pondera County.

Mr. Loble: We are familiar with the document and have 136 no objection.

(The document referred to was marked Applicant's Exhibit 3 for purposes of identification, by the Reporter.)

Mr. Booth: Mr. Jardine, that mortgage is likewise on file with the Secretary of State, is it not?

Mr. Jardine: That is right. It is on file with the Secretary of State.

Mr. Booth: We have no objection.

Examiner Bernhard: Does anyone else have any objection to receiving the document in evidence? If not, it will be received as Applicant's Exhibit No. 3.

(Applicant's Exhibit 3, heretofore marked for identification, was received in evidence.)

Mr. Jardine: At this time we offer in evidence the extension agreement dated the twenty-third day of December, 1929, between the Montana Western Railway Company and the Great Northern Railway Company, and the Guaranty Trust Company of New York, extending the mortgage and the time for payment of the bonds to the first day of January, 1932. This agreement,—extension agreement,—duly executed, was filed for record in the office of the County Clerk and Recorder of Pondera County, Montana, on December 30th, 1929, at 2:55 P. M., and a copy of the extension agreement was likewise filed with the Secretary of State.

(The document referred to was marked for identification, Applicant's Exhibit 4, by the Reporter.

137 Mr. Loble: That was approved by the Interstate Commerce Commission?

Mr. Jardine: Yes; it was approved by the Interstate Commerce Commission, under Docket No. 158, I. C. C.,—

Examiner Bernhard: That is Applicant's Docket number, I think.

Mr. Jardine: This was by order of the Commission dated December 23rd, 1929; In the Matter of the Montana Western Railway Company, 158, I. C. C., 492, wherein the applicant was authorized to extend the maturity of the one hundred and sixty-five thousand dollars of bonds from January 1st, 1922, to January 1st, 1932, and we offer, by reference, that order of the Commission.

Mr. Loble: We are familiar with the document. It is a matter of public record. We have no objection.

Mr. Booth: No objection.

Examiner Bernhard: The extension agreement which you have described is admitted in evidence as Applicant's Exhibit No. 5. I understand there was no objection to it?

Mr. Loble: No objection, Mr. Examiner.

(Applicant's Exhibit 4, heretofore marked for identification, was received in evidence.)

Mr. Jardine: We likewise offer in evidence as Applicant's Exhibit No. 5 the last extension agreement made between the Western Montana Railway Company and the Great Northern Railway Company and the Guaranty Trust Company of New York, as trustee, under date of December 11th, 1937, the original,—one of the original copies, which was filed for record in the office of the Secretary of State, and one of them recorded in the office of the County Clerk and Recorder of Pondera County, Montana. I don't have the date of that recording.

Examiner Bernhard: I don't think it is essential.

Mr. Loble: We are likewise familiar with that, and we have no objection.

Examiner Bernhard: Is there any objection?

Mr. Loble: No objection.

Mr. Booth: No objection.

(The document above referred to was marked Applicant's Exhibit 5 for the purpose of identification by the Reporter.)

Examiner Bernhard: If there is no objection, the document above referred to is received in evidence as Applicant's Exhibit No. 5.

(Applicant's Exhibit No. 5, heretofore marked for the purpose of identification was received in evidence.)

Examiner Bernhard: What is the name of this county? Was it something different at one time?

Mr. Jardine: It was Teton County, originally. In 1919 it was changed to Pondera County, that is, Teton County was divided into four counties of which Pondera was one.

Examiner Bernhard: I see.

139 Mr. Jardine: We likewise offer in evidence Finance Docket No. 11858 of the Interstate Commerce Commission, and its order thereunder authorizing the execution of the extension agreement last referred to, under date of December 10th, 1937. This order is of record in the Interstate Commerce Commission's files, and we offer it by reference.

Mr. Loble: No objection.

Examiner Bernhard: Is there any objection?

Mr. Booth: No objection.

Q. (Mr. Jardine, continuing:) Mr. Palin, you are familiar with the first mortgage bond and the extension agreement I have just referred to? A. I am.

Q. And the first mortgage bond is held by the Great Northern Railway Company at the present time, the original owner of the bond? A. Yes.

Q. The bond was issued under date of January 1st, 1912, and the mortgage given to secure it was,—and the bond itself is in the sum of \$165,000.00, and it bears interest at the rate of six per cent per annum, payable annually. Has any money ever been paid, either in principal or interest, on that bond? A. No.

Q. And can you tell us the reason no payment was ever made? A. The Montana Western Railway Company never had the money with which to make a payment.

Q. So that the full amount of the bond and mortgage, to-wit: One hundred sixty-five thousand dollars, together with interest thereon at the rate of six per cent per annum from January 1, 1912, is now due, or past due, owing and wholly unpaid? A. Yes; it is.

Q. You have in your possession, Mr. Palin, the original stock issued by the Montana Western Railway Company to the present owners of the stock, and without introducing them in evidence, but for the purpose of showing the present stock ownership, will you state by reference to your stock certificates, how the stock of the Montana Western Railway Company is now owned?

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record: Will you read the last question, Mr. Reporter, please?

(Whereupon, the pending question was read by the Reporter.)

A. The Valier Company, 1995 shares,—

Examiner Bernhard: All in one certificate?

The Witness: No; in two certificates. That is the total. Do you want them separately?

Examiner Bernhard: No; that is all right.

141 A. (Continuing:)—John H. McMillan, Junior, one share; C. E. Atwood, one share; W. F. Palin; one share; Cargill M. Cargill, one share; C. P. Fuller, one share. That should make two thousand.

Examiner Bernhard: Your total is two thousand?

The Witness: Yes; a total of two thousand.

Examiner Bernhard: Are the holders of these last five shares you described directors?

The Witness: All of them qualifying shares,—each a director.



Examiner Bernhard: Does counsel want to examine these certificates?

Mr. Loble: No, Mr. Examiner. We have looked at them.

Q. (Mr. Jardine, continuing:) Mr. Palin, the five individuals whom you named are all directors of the Montana Western Railway Company, are they not? A. They are.

Q. And the 1995 shares of stock that is issued and outstanding in the name of the Valier Company was formed owned by The Valier, Montana, Land and Water Company? A. They were.

Q. And through reorganization proceedings the stock was transferred,—all of the stock, two thousand shares of stock, was authorized to be transferred from that company to the Valier Company? A. Well, there were 1995 shares that were transferred from The Valier, Montana, Land and Water Company to the Valier Company.

Q. The five shares of stock are qualifying shares, is that not correct, as directors? A. Yes, sir.

Q. The stock issued to the Valier Company was issued to it through the authority of the Federal Court authorizing the transfer? A. It was.

Q. Now, in addition to the principal and interest owed on the first mortgage bonds heretofore referred to, is the Montana Western Railway Company at this time likewise indebted to the Great Northern Railway Company in further amounts? You may just answer yes or no, on that. A. Yes.

Q. The amount of that indebtedness has accrued since approximately since the year,—late in the fall of 1924, has it not,—that additional indebtedness? A. Yes; it has been accruing right along.

Q. Well, I say, since 1924? A. Yes, it has.

Q. And you have examined the ledger books of the Montana Western Railway Company, and can you give us the amount of the additional indebtedness, other than principal and interest on this first mortgage bond, as disclosed by those books, that the Montana Western Railway Company owes to the Great Northern Railway Company as of March 31st, 1949?

Mr. Loble: Rather than make the objection that this is not the best evidence, I assume that the books are available for inspection?

Mr. Jardine: That is right. I will say in connection with any evidence offered by any witness that is here in connection with the books of the company, the records are taken from the,—either from the first entry made in the office of the Montana Western Railway Company, or from the ledger books which will reflect the first entry, and that likewise from the Annual Reports that are made to the Interstate Commerce Commission which reflect the necessary information taken from the ledger sheet, and that in addition to that check,—I will withdraw that,—that the Interstate Commerce Com-

mission examines the books of the Montana Western Railway Company and audits them, and likewise the Great Northern Railway Company audits them, and if there is any mistake,—

Mr. Loble: The Great Northern Railway Company audits them?

Mr. Jardine: That is right.

Mr. Loble: By authority of the Interstate Commerce Commission, or of its own volition?

Mr. Jardine: I think of their own volition.

144 Mr. Loble: O. K.

Q. (Mr. Jardine, continuing:) You have examined the ledger books and know as of March 31st, 1949, the additional money owed to the Great Northern Railway Company, in addition to principal and interest, isn't that correct, Mr. Palin? A. Yes.

Q. And can you tell us that amount as of March 31st, 1949? A. \$195,829.22.

Q. And that amount has accrued since the fall, or approximately the fall of 1924, over the period of years? A. At least from 1924; yes.

Q. What does that amount,—what items,—or what various items go to make the amount of \$195,829.22? A. Materials furnished,—materials advances, supplies, repairs and labor, furnished by the Great Northern Railway Company.

Q. And has any of that amount been paid? I mean since the \$195,829.22 as of March 31st, 1949? A. No; none has been paid.

Q. And is that still due, owing and wholly unpaid? A. That is right; it is.

Q. That, I don't think, includes any interest, does it? A. No; just the cost of the items I mentioned.

Q. And I think you stated that since approximately the fall of the year 1924 the Montana Western Railway Company has  
145 operated at a loss, as disclosed by their books? A. It has.

Q. And the actual money necessary to pay the operating expenses over and above the receipts,—over and above the money received by the Montana Western Railway Company for the services rendered has been furnished by whom since that time, up until here just recently? A. By the Great Northern Railway Company.

Q. And do you know whether or not since that date the Great Northern Railway Company has refused to make further advances to the Montana Western Railway Company? A. They have.

Examiner Bernhard: Could we get that date. You say they advanced up to a given date,—do you have that date?

Mr. Jardine: I think we have that. We were coming to that.

Examiner Bernhard: You will come to it? All right.

Mr. Jardine: It is some time, I think, along about the first day of March of this year, and I will introduce that evidence by Mr.

-Young who has had charge of negotiations with the Great Northern Railway Company, but for the information of counsel, that is up until,—

Mr. Loble: I assume it is the same date recited in your application?

Mr. Jardine: That is right.

146. Mr. Loble: There are two days, one in January and one in February.

Mr. Jardine: Yes, but I think the last date is controlling, the date they refused from that time on to make further advances, the 28th of February or the first of March.

Q. (Mr. Jardine, continuing: ) Mr. Palin, you have been employed by The Valier, Montana, Land and Water Company, and its successor, The Valier Company, over a period of how many years? A. Twenty-six years.

Q. And that has been continuously last past? A. Yes.

Q. And you are, in general, familiar, are you not, with the number of people residing in the immediate vicinity of Valier at the present time,—I mean in a general way? A. Yes.

Q. And you have lived here in the community of Valier since what time? A. 1912.

Q. And since your first employment with The Valier, Montana, Land and Water Company, would you say that except,—with the exception of the town of Valier there has been any increase in population in the community? A. In the rural,—

Q. In the rural community served by the Montana Western Railway? A. No, I don't believe there has been any increase.

147 Q. Would you say,— A. (Interposing: ) In the population of the rural,—

Q. That is right. A. Of the territory served by the Montana Western?

Q. That is right,—outside of the town of Valier? A. No, I don't believe there has been.

Q. Would you say it is approximately about the same population now? A. In my opinion I would say it is about the same.

Examiner Bernhard: As when?

The Witness: As it was fifteen or twenty years ago.

Mr. Jardine: I think at this time with the right to recall him after other evidence has been submitted, in order to connect it up,—and we will ask for that right,—but with the exception of that we are through with this witness at this time.

Mr. Loble: If he is going to be recalled, we have no matters to inquire into now, but I will have later.

Examiner Bernhard: Would you be satisfied to have him step aside for the present and recall him at a later time?

Mr. Booth: At this time I would like to ask a question, Mr. Examiner.

Examiner Bernhard: Very well.

148. Cross Examination

Q. (By Mr. Booth:) Mr. Palin, you referred to a figure of one hundred and ninety-nine thousand some odd dollars you owed to the Great Northern Railway Company? A. One hundred and ninety-five thousand.

Q. Oh, I misunderstood you. A. \$195,829.22. Are you referring to that figure?

Q. Yes. In your questionnaire filed with the Commission you show an item of equipment obligation of eight thousand dollars. Is that one of the items owed to the Great Northern Railway Company? A. Yes.

Q. And you likewise show \$124,412.00, current accounts? A. Yes.

Q. Yes. And miscellaneous accounts payable of \$6,877,—is that largely Great Northern, or what is the fact on that? A. What are you referring to?

Q. I am referring to Exhibit "A" of your questionnaire, the balance sheet. A. Exhibit "A"?

Q. Yes. A. In the current liabilities under the heading of "current liabilities?"

Q. Under the heading of "Miscellaneous accounts payable." A. Yes.

149. Q. Item 761, Miscellaneous accounts payable. A. There is six thousand dollars of that \$6877.62 which was advanced in 1948 by the Great Northern Railway Company. The balance is— I don't know just,—there is an item there of \$612.00, I believe that is Great Northern, too, and then there is another small item, but the bulk, the six thousand dollars, is an advance made in 1948 by the Great Northern Railway Company, and the other, I just can't tell you exactly, but it is—

Q. Your total current liabilities according to Exhibit "A" of the questionnaire amount to \$200,337.35? A. Yes.

Q. Adding to that the equipment account of eight thousand dollars would give you liabilities of \$208,337.35? A. That is right.

Q. And of that amount the figure you previously gave of \$195,000.00 some odd dollars is owed to the Great Northern Railway Company, and the balance to other creditors? A. Well now, this taxes,—you are taking in the \$200,000, the total of current liabilities?

Q. That is right. A. There is \$3,319.52, that is account 767, taxes accrued, which are,—that is not due the Great Northern. That is retirement,—railroad retirement, and withholding taxes. It is



more or less a trust fund, in that particular set of accounts.

150 Mr. Jardine: May I interrupt you on that question: Doesn't that also include taxes due Pondera County? A. Yes; we accrue them by the month. That includes taxes due Pondera County on the line.

Q. (Mr. Booth continuing:) Then there would be likewise approximately ten thousand dollars, in addition to taxes, which is owed to other creditors than the Great Northern Railway Company?

A. I didn't understand?

Q. There will be approximately ten thousand dollars owed to other creditors than the Great Northern, after excluding taxes? A. I can't follow you on that.

Mr. Jardine: I think you are getting confused on the equipment obligation.

A. I know he is carrying that eight thousand dollars down, out of another group here.

Q. (Mr. Booth, continuing:) Let me ask this question,—maybe I am confusing myself;—is the eight thousand dollars included in the \$195,000.00 you spoke of as owing to the Great Northern? A. No; it isn't.

Q. So that actually you would owe the Great Northern,— A.

(Interposing:) Eight thousand dollars more, in addition  
151 to the \$195,829.22.

Mr. Booth: That clarifies what I was getting at. I have no further questions.

Mr. Loble: May I examine?

Examiner Bernhard: As to matters he covered; yes.

Mr. Jardine: As to matters he testified to.

### Cross Examination

Q. (By Mr. Loble:) Starting in the inverse, with the last statement you made, and working back: Counsel asked you if there had been any increase in the population in the rural area, and you said you didn't think there had been very much change, as I understood you; is that correct? A. That is right.

Q. There isn't any reason to have any great change of population, unless it is by the birth of additional children, in rural areas; the land doesn't get any larger or smaller? A. The farm, ounts get larger; the farms have a much larger acreage now than they had twenty or twenty-five years ago.

Q. That doesn't reflect a condition that is adverse to this community, does it? A. No, I wouldn't say it was. They are farming better, and farming larger acreages with tractors and modern machinery.

Q. The Valier Company controls about thirty-five thousand acres out here itself, doesn't it? A. No; it doesn't.

152 Q. How much does it control?

Mr. Jardine: If you don't know exactly, then approximately, Mr. Palin.

A. It has twenty-six thousand acres.

Q. That you own outright? A. Yes, sir.

Q. And by leases you control more, do you not? A. No. That land is all leased out, and under farm leases, to a number of different farmers.

Q. Your twenty-six thousand acres? A. That is right.

Q. Have you any interest, directly or indirectly, in more than that? A. In land around here?

Q. Yes. A. No.

Q. Now, it is true the population, the rural population moves, the trend has been, not only in this county but elsewhere, the trend has been to the towns, has it not, all over the country? A. Of course, during the war they left for the industrial centers. We lost quite a few people in these smaller towns.

Q. That is right. But a good many people who were raised on farms have moved into the cities, have they not? A. There has been some. I wouldn't know just how many.

153 Q. There isn't any particular point in your testimony, is there, Mr. Palin, about the rural area being just the same now as it was fifteen years ago? A. Well, I know there are vacant buildings around that used to be occupied.

Q. Where? A. Around Valier.

Q. You mean on farms? A. On farms; yes.

Q. You say that in the past fifteen years that this county which has been developed under this project here, — would you say it has advanced or not advanced?

Mr. Jardine: Just a minute. To which we object, — I don't think whether the county has advanced would be material; I think it would simply be the area.

Mr. Loble: I will accept your suggestion.

Q. (Mr. Loble, continuing:) Is it your contention since you have been operating here, and since the operation of this project here, the Valier project, that the rural area has improved as a farming community, or not improved? A. I believe that the buildings, the homes, and the buildings, have been improved. I believe they are doing better farming with modern machinery, but the trend has been for a larger acreage, farming acreage.

Examiner Bernhard: You mean a larger acreage per farm?

154 The Witness: Yes.

Q. (Mr. Loble, continuing:) In other words, — A. (Interposing:) In other words, with horses they were restricted. They couldn't farm nearly as much as they can now with the modern machinery.

Q. Just like your company can operate twenty-six hundred acres with more profit than they can operate one hundred acres? A. We don't farm it; we lease it.

Q. Well, you can farm twenty-six hundred acres with far more profit than you can farm one hundred and sixty acres?

Mr. Jardine: You mean make more money?

Mr. Loble: Yes; I think that is the reason they are in business, is for the money, aren't they?

Q. (Mr. Loble, continuing:) That is right, isn't it? A. I would like to have you repeat the question.

Mr. Loble: I believe the Reporter will read it for you.

(The pending question was read by the Reporter.)

Mr. Jardine: In other words, you make more profit out of twenty-six hundred acres than you do out of one hundred and sixty? A. Sure.

Mr. Loble: That is right.

Q. (Mr. Loble:) And that is all that statement amounts to, you admit the population, the rural population is not as great  
155 as it was before,—

Mr. Jardine: I think that is argumentative, and we object on that ground. It is clear in the record what the population is, and what inferences would be drawn from that isn't for the witness or the attorney.

Mr. Loble: I want to see how he figures these things, whether it is getting worse or better around here. He ought to know; he has been here a long time.

Examiner Bernhard: I think I will let him answer. Read the question, Mr. Reporter.

(The pending question was read by the Reporter.) A. I believe that our yields per acre are possibly as good as they were,—not quite as good, I will put it that way, as when the land was first broken up. We are losing some of the fertility, and so far as producing more, we are doing a better job of summer-fallowing than we did fifteen or twenty or twenty-five years ago, and I think that has a tendency to increase the yield. Does that answer your question?

Q. I thought it was answered when I first heard it, but I am satisfied to accept that. Now, from 1924 on,—that date was picked by Mr. Jardine as being when the losses in the operation of this railroad commenced; is that correct? A. Yes; so far as we could determine by the records we have, and the books.

Q. And from 1924 on, the Great Northern Railway Company has not been exclusively the one who advanced this money,  
156 is it? A. To my knowledge, since I have been connected with it officially, in an official capacity with the Montana Western Railway Company, it has been.



Q. The Valier Company;— A. (Interposing:) With the exception of this year.

Q. This spring who advanced it then? A. The Valier Company.

Q. To what extent? A. To what amount?

Q. Yes. A. Eighteen hundred dollars.

Q. Before 1924 did the Valier Company make advances for the operation of the railroad? A. I couldn't answer that. I haven't looked up the records to find out. I couldn't answer that.

Q. So that since, up to the present time, give us in one figure the amount the Montana Western Railway Company owes to the Great Northern Railway Company. Give us the total figure.

Mr. Jardine: That is up to March 31st? Would that be all right?

Mr. Loble: Yes. A. The total amount.

Q. (Mr. Loble, continuing:). Yes. A. Adding on the 157 eight thousand dollars?

Q. Adding on everything. A. You mean the total amount now?

Q. Yes; give us the whole works. A. \$737,604.22.

Q. How much is the railroad worth? A. The stock can be bought for one dollar.

Q. Anybody who wants to buy it for one dollar can have it; is that right? A. To any responsible person.

Q. If they want to assume how much in debts? A. \$737,604.22.

Q. So, as a practical matter, the Great Northern from the standpoint of indebtedness owns this road now, doesn't it? A. It is still in the name of the Montana Western Railway Company.

Q. That is right, in the name of the Montana Western, but you say the stock is worth one dollar, and you owe them, you say, how much? A. \$737,604.22.

Q. Seven hundred and thirty-seven thousand and,— A. Six hundred and four dollars and twenty-two cents.

Q. Six hundred and four dollars? A. That is right.

Q. \$737,604.22; is that right? A. That is right.

158 Q. Is that what this railroad owes the Great Northern? A. Yes.

Q. And that has been going on since,—part of it has been going on since 1924, and a part of it has been incurred by reason of the \$165,000.00 of the original bonds; is that right? A. That is right.

Q. What were the bonds issued to the Great Northern for, originally, the \$165,000.00? A. Well, it was,—

Mr. Jardine: Do you have the figures there, Fred? I have them. A. Wait a minute, I have them. There was \$144,688.13 for bills for construction and rolling stock.

Q. (Mr. Loble, continuing:) That is, when the road was built that represents money paid by the Great Northern to this company



for that purpose, or does it represent,— A. (Interposing:) It represents the bill for construction and rolling stock.

Q. Was that amount of materials furnished by the Great Northern, or was it money furnished by the Great Northern? A. The records show that it was bills for construction and rolling stock.

Now, just what that includes, materials, or what, I don't know.

Q. The rolling stock was acquired from the Great Northern, was it not, originally? A. Well, it must have been. I don't know. It said "rolling stock." I don't know whether they got a locomotive or a box car from the Great Northern. I don't know.

Q. You don't know either, Mr. Palin, the Montana Western when it first started, what kind of prices it paid for the construction and the rolling stock it got from the Great Northern? You don't know?

A. No; I don't know what prices were computed on that.

Q. Whatever the arrangement was at that time, and whether it was an equitable one, or whether you got dollar value, you don't know? A. I wouldn't know.

Q. It wound up by one hundred and sixty-five thousand dollars worth of bonds being given to the Great Northern? A. There is a notation there. The figure I gave you, of that \$144,688.13 was for bills for construction and rolling stock, and then the interest on deferred payments was \$20,311.88, totaling \$165,000.00.

Q. So the original bond issue, what you testified to here is explained by your testimony now. Twenty thousand dollars was interest,—at what per cent? A. These bonds, the present bonds, call for six per cent. Now just what interest they were computing there, I don't know. It might have been six per cent,—I don't know.

160 Q. Do your records show how much interest you paid on the \$144,688.13, which were advances, or money having to do with construction and rolling stock? Do you know how much interest that was? That was more than six per cent, wasn't it? A. You mean the interest paid on the one hundred and forty-four thousand dollars?

Q. Yes. A. I don't know. I never looked to see if any interest was paid on the \$144,000.00.

Q. But in order to arrive at \$165,000.00 that you owed the Great Northern, some \$20,000.00 in interest was added, was it not? A. To make the \$165,000.00; yes.

Q. Now, do your records show there whether the company that built the railroad,—what was its name at that time? It was not the Valier Company; it was a predecessor company, was it not? A. I believe it was the Conrad Land and Water Company at that time.

Q. For the purpose of the Examiner and myself, the original company was the Conrad,—will you give us that name again? A. The Conrad Land and Water Company.

Q. Then that company was succeeded by what company?

161 A. Valier, Montana, Land and Water Company.

Q. And that was succeeded by what? A. The Valier, Montana, Land and Water Company.

Q. And that is what it is now? A. No.

Q. We have still another one? A. Yes.

Q. What is the last one? A. The Valier Company.

Examiner Bernhard: The Valier Company?

The Witness: The Valier Company; yes.

Q. (Mr. Loble, continuing:) I have got to slow you up, Mr. Palin. I have to get them down here. The first one was what? A. The Conrad Land and Water Company.

Q. Then what, again, please? A. Valier, Montana, Land and Water Company.

Q. And the next? A. The Valier, Montana, Land and Water Company.

Q. What was the next? A. The Valier Company. That is the present company.

Q. There is not "A" Valier Company? You haven't had that yet? A. No; that is the present company, The Valier Company.

Q. There is one, two, three, four. The Conrad Land and  
162 Water Company was the first company to start on the construction of this railroad; is that correct? A. The Conrad Land & Water Company?

Q. Yes. A. Yes; I believe it was.

Q. Then did they go into receivership? A. I couldn't tell you. Mr. Jardine: It went through reorganization.

Q. (Mr. Loble, continuing:) It is a fair assumption it went through something? A. Yes.

Q. Valier, Montana, Land and Water Company, did that go through something? A. Yes.

Q. Receivership? A. Yes.

Q. The Valier, Montana, Land and Water Company, did that go through something? A. It went through bankruptcy.

Q. Bankruptcy. And the Valier Company is the present company? A. Yes, sir.

Q. Now, you have there on your stock,—you have there two thousand shares of stock, have you not? A. Yes.

Q. Fully issued? A. Yes.

163 Q. With a valuation of one hundred dollars a share; is that right? A. That is right.

Q. That is two hundred thousand dollars? A. Yes,—two hundred thousand dollars, less fifty thousand dollars unpaid.

Q. Unpaid by whom? A. By the Valier Company, or its predecessors.

Q. The Valier Company, or its predecessors, then owes fifty thousand dollars; is that right? A. Possibly do.

Q. And if you gave yourself the fifty thousand dollars and own all the stock in this railroad, it would be in pretty good shape, wouldn't it? A. What would?

Q. What? A. What would?

Q. The railroad. The Valier Company owns the railroad, doesn't it? A. Yes; it does.

Q. It owns all of the stock except five shares that are owned by the directors; that is right, isn't it? A. Yes.

Q. And if the Valier Company, which owns this stock were 164 to pay into the Montana Western the fifty thousand dollars it owes, it would be fifty thousand dollars to the good, wouldn't it,—the Montana Western Railway Company?

Mr. Jardine: That assumes a state of facts not shown by the evidence,—that the Valier Company owes anything.

Mr. Loble: You say that, but that isn't what he says. He says that either the Valier Company, or its predecessors, owes it, and he is testifying.

Mr. Jardine: I want to put the record straight.

Mr. Loble: Let him testify. He is the one who is testifying; not you.

Mr. Jardine: He didn't say the Valier Company owed it.

Mr. Loble: He said the Valier Company, or its predecessor.

Mr. Jardine: That is correct. Did he say the Valier Company owed it?

Mr. Loble: No, he didn't.

Examiner Bernhard: If he has any other information on it, he ought to clear it up.

Mr. Loble: That is what I am trying to do.

Q. (Mr. Loble, continuing:) You issued to the Valier Company two thousand shares of stock as fully paid, to the Valier Company and the five directors, and that is the way that stock has stood since 1945, at least part of it, isn't it? A. Yes.

Q. But the stock,—that amount of money has not yet been 165 paid for it, has it, by the Valier Company? A. You mean the two hundred thousand dollars?

Q. Yes. A. No; the total of two hundred thousand dollars has never been paid.

Q. It is fifty thousand dollars short of the two hundred thousand? A. Yes.

Q. You did not issue, after you got the stock through the Valier, Montana, Land and Water Company, you did not issue to you, the Valier Company, one hundred and fifty thousand dollars worth of stock; you issued two hundred thousand dollars worth, including the five directors? A. That is right.

Mr. Lobel: O. K. I believe that is all for the moment. I understand the witness is going to be recalled, or someone else, on some other matters?

Mr. Jardine: That is right.

Examiner Bernhard: That is right. You are excused for the present,—is there any other cross examination at this time on the matters covered in his direct examination?

Mr. Jardine: Just a minute.

#### Redirect Examination

Q. (By Mr. Jardine:) Now this loss in the operation of the railroad that has been paid by the Great Northern Railway Company, that has been paid by the Great Northern since approximately the fall of 1924. Prior to that time, Mr. Palin, do you know whether there was any loss in operations,—I think you said you didn't know? A. You mean annual loss?

Q. Yes. A. Yes; there has been.

Q. I mean prior to 1924. A. Yes; there has been losses prior to 1924.

Q. Do you know whether they were practically continuous from the time the railroad started in operated up to 1924? A. To the best of my knowledge; yes.

Q. Up to 1924 the losses in annual operation were not paid by the Great Northern Railway Company? Prior to 1924 this loss in operations was not met by the Great Northern Railway Company? A. Not to my knowledge.

Q. Do you know whether or not the predecessor, or one of the predecessors of the Valier Company paid that loss, or made up the deficit? A. Prior to 1924?

Q. Yes. Do you know whether the records would show where that money came from? A. Yes; the records would show.

Q. Do you know what they show? A. I wouldn't know.

167 Q. You would have to go to the records? A. Yes; I would have to go to the records for that.

Examiner Bernhard: You are speaking now as to making up the losses that accumulated up to 1924?

Mr. Jardine: Yes; from the time of the starting of operations of the Montana Western up to 1924.

Examiner Bernhard: May I ask at this time if any interest was ever paid on the bonds?

The Witness: No; not a dollar.

Q. (Mr. Jardine, continuing:) Have you ever had any money with which to pay the interest? A. Never, to my knowledge.

Q. So as you know, and so far as the records disclose? A. There was no money available to pay interest.



Q. Do you know whether or not the records disclose whether the Montana Western ever paid a dividend, or not? A. Yes; the records would disclose that, if they did.

Q. And do you know whether they have or not? A. No.

Q. You don't know whether they have or not. You know that since 1924 they have not? A. They have not, since 1924.

Q. Can you check the records to determine whether they have prior to that? A. Yes.

168 Q. You say the Valier Company owns the railroad,—I think you said in answer to counsel's question. Actually the ownership,—isn't it true the ownership of the Valier Company is the ownership of 1995 shares of stock? A. Yes.

Q. And that stock was transferred to the Valier Company by an order of the Federal Court in reorganization proceedings? A. Yes.

Q. The Valier Company didn't pay anything for the stock, did it? A. It was just transferred to it.

Q. Transferred to it by order of the court? A. In bankruptcy,—reorganization.

Mr. Loble: Is that one of the orders you offered in evidence?

Mr. Jardine: No; I haven't got it. I will get it if you want it.

Q. And that bankruptcy reorganization was the reorganization of The Valier, Montana, Land and Water Company under Federal bankruptcy proceedings, was it not? A. That is right.

Q. And in that Federal bankruptcy proceeding, The Valier, Montana, Land and Water Company was shown to be the owner of the stock issued to it, to-wit: 1995 shares; is that not true?

169 A. That is right.

Q. And at the time the stock was issued to the Valier, Montana, Land and Water Company, it showed that out of that 1995 shares of stock, 1439 shares had been issued as fully paid, and the balance of, I think 556 shares showed it had been paid ten per cent? A. That is right.

Q. And it was simply a transfer of the stock which had theretofore been issued to The Valier, Montana, Land and Water Company through reorganization proceedings to the Valier Company? A. That is right.

Q. Through bankruptcy proceedings? A. That is right.

Examiner Bernhard: There is something I don't understand there. May we go off the record a minute?

(Discussion off the record.)

Examiner Bernhard: Back on the record, Mr. Reporter.

Q. (Mr. Jardine, continuing:) The stock certificate, No. 30, for 19439 shares, dated the ninth of March, 1945, was issued to the Valier Company and simply shows that the stock was fully paid and non-assessable; is that true? A. Yes.

Examiner Bernhard: What was your answer?

170 The Witness: Yes.

Q. (Mr. Jardine, continuing:) Stock Certificate 556,—I will withdraw that, Mr. Reporter. Stock Certificate No. 31 for 556 shares was issued to the Valier Company and shows that it was ten per cent paid and non-assessable; is that correct? A. That is right.

Q. That is in accordance with the stock that had theretofore been issued The Valier Land and Water Company; is that correct?

A. That is right.

Q. This same notation was put on this certificate that was put on the prior certificate? A. That is right.

Q. The Valier Company didn't have anything to do with the issuance of this stock to it? I say, the Valier Company simply accepted this stock after it was issued to it? A: Yes.

Q. By order of the Bankruptcy Court at Great Falls? A. Yes, sir.

Q. Which authorized the transfer of 1995 shares,—in fact, two thousand shares to the Valier Company?

Mr. Lobel: I don't like to make the objection, Mr. Jardine, on the ground it is not the best evidence. I haven't seen the bankruptcy records. If you have them I would like to see them.

171 Mr. Jardine: I have them.

Mr. Lobel: That figure is a mystery to me, that liability of two hundred thousand dollars, the way it is, and even more since I have heard the testimony here.

Examiner Bernhard: Suppose we take a ten minute recess at this time.

(A short recess was taken.)

Examiner Bernhard: You may proceed.

Q. (Mr. Jardine, continuing:) Mr. Palin, the actual issue of stock originally to the Conrad Land and Water Company, the company's books show an issue of two thousand shares of stock, five shares to the directors, and the 1439 shares to the Conrad Land and Water Company, fully paid, and 556 shares ten per cent paid issued to Conrad Land and Water Company, and that is the way the present books show the issue of the stock? A. That is right.

Q. The one hundred and fifty thousand dollars actually was the money that the Conrad Land and Water Company put into the original investment in building the railroad, according to the books of the company? A. That is right.

Q. They didn't put any additional fifty thousand dollars, that is, the additional fifty thousand dollars to make the two hundred thousand dollars? A. According to the records they did not.

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Q. And so far as you know the only investment the Conrad Land and Water Company made in the Montana Western Railway Company when the road was originally built was the one hundred and fifty thousand dollars that they put into the building of the railroad, according to the records? A. According to the records, that is right.

Q. And the transfer from the last corporation prior to this one, The Valier Land and Water Company to the Valier Company, and the present issue of the stock was pursuant to the order of the court in the reorganization proceedings? A. That is right.

Q. And the stock, I think, in the reorganization proceeding, the stock of the Montana Western Railway Company was listed as an asset of The Valier, Montana, Land and Water Company, and was listed at a value of one dollar for the two thousand shares of stock? A. That is right.

Mr. Jardine: I think that is all.

Mr. Loble: May I inquire further?

Recross Examination.

Q. (By Mr. Loble:) If only one hundred and fifty thousand dollars was put into the railroad originally, how did it come, if you know, that two hundred thousand dollars worth of stock was issued? A. All I know is from the records we have.

Q. Why did, A. (Interposing:) There is one hundred and fifty thousand dollars of money.

Q. Then who got the fifty thousand dollars worth of stock, the difference between one hundred and fifty thousand and two hundred thousand dollars? A. Well, there is 1995 shares of stock in the name of The Valier Company.

Q. All right. A. There is 1439 shares fully paid, and there is ten per cent of the 556 paid,—556 shares.

Q. How much,—who authorized the issuance of that stock as paid in full, if only ten per cent was paid?

Mr. Jardine: Just a minute. The record doesn't show it was paid in full; it shows it was issued ten per cent paid, 556 shares.

Q. (Mr. Loble, continuing:) That is five hundred,—how much money was paid then on that stock, the ten per cent? A. Well, according to the records there was ten per cent of \$55,600.00.

Q. Approximately fifty-five hundred dollars? A. Yes; \$5560.00.

Mr. Jardine: \$5560.00.

Q. (Mr. Loble, continuing:) Paid? A. According to the records, there was ten per cent of \$55,600.00, which is \$5560.00.

Q. But to go back, we have one hundred and fifty thousand dollars you say was put in the railroad for which stock was issued, \$5560.00 was paid on this other stock; is that right? A. You said \$150,000.00 was paid?

Q. That is what the railroad cost. A. And then this ten per cent?

Q. Yes. A. No; there was 1439 shares,—that one certificate is fully paid.

Q. That was for the building of the railroad? A. I presume it was, according to the records.

Q. 1439 shares at \$100.00 a share, wasn't it? A. Yes.

Q. That was issued? A. Yes.

Q. When the railroad was originally built? A. Well, I don't know whether it was issued at the time it was originally built, or when. We would have to look up the records.

Q. And the Great Northern put up \$144,000 at that time? A. That \$144,000 was bills for construction and rolling stock.

Q. Well what happened to the,—some one hundred and forty thousand dollars in money that was paid for the stock of the railroad? A. Where do you get the \$140,000.00?

Q. 1439 shares,— A. Yes.

Q. at one hundred dollars a share? A. It must have been spent on the road, so far as I know,—so far as the records show.

Q. Then the construction and rolling stock, for which the Great Northern was given \$165,000.00 worth of bonds, doesn't represent all the money that was spent building this railroad,—or do you know? A. I don't know, but I wouldn't,—it must have cost more than that. I don't know how much.

Q. You don't know how much it cost to build the railroad? A. No.

Q. And your books show where this \$150,000.00, or thereabouts, went in money that was paid for the stock? A. I have never checked that up on our books to see where it was spent.

Q. Where it went. In connection with the bookkeeping entry that you have here in Exhibit "A", that has been the subject of our discussion, that is odd, is it not, from a bookkeeping standpoint, to be carrying the fifty thousand dollars as a less amount unpaid by The Valier, Montana Land and Water Company, isn't it?

176 A. This form of balance sheet, as Exhibit "A", is prepared by the Great Northern Railway, and we fill it in accordingly.

Q. Do they keep your books for you? A. No; we keep the books, but this form of balance sheet, we insert the figures, but the form was prepared by the Great Northern Railway.

Q. Why does the Great Northern Railway prepare the form for your balance sheets? A. That has been done for years. I don't know why.

Q. How long has that been done? You say, for years? A. Well, it has been done for eight years that I know of.



Q. In other words, this exhibit that we have here, "A", is in true and in fact an exhibit prepared by the Great Northern Railway?

A. As prescribed by the Internal,—

Examiner Bernhard: The Interstate Commerce Commission? A. By the Interstate Commerce Commission; yes.

Examiner Bernhard: By "form" you mean the blanks on which you insert the figures?

The Witness: No; these account numbers. All the account numbers are prescribed.

Examiner Bernhard: That is, prescribed by the Interstate Commerce Commission?

The Witness: Yes, sir.

177 Examiner Bernhard: Has the Great Northern been inserting these figures for you?

The Witness: No; we fill those in from our monthly records.

Examiner Bernhard: Who is responsible for this item under "Capital Stock," "Less amount unpaid by The Valier, Montana, Land and Water Company, \$50,000.00"? Did the Great Northern Railway Company have anything to do with that?

The Witness: No; the Great Northern just prints the form that we use.

Examiner Bernhard: Well, in the printed form, the expression "Less amount unpaid by the Valier, Montana, Land and Water Company," doesn't appear, does it?

The Witness: In where?

Examiner Bernhard: In the printed form you use in filling out your balance sheet?

The Witness: This is the form of balance sheet that is mailed to us,—that is sent to us by the Great Northern, and the account numbers and the description of these accounts are all printed in here, and we fill in the figures to carry off the statements,—to make up the statements. Where this "Capital Stock, less amount unpaid by Valier, Montana, Land and Water Company, \$50,000.00",—where that wording originated, or how long ago, I don't  
178 know.

Examiner Bernhard: Is that the expression you have been carrying for years?

The Witness: For years and years.

Examiner Bernhard: Well, the net amount of capital stock being carried on your balance sheet is in the righthand column, \$150,000.00, isn't it?

The Witness: Yes.

Examiner Bernhard: And that amount is what goes in to make up your total liabilities; is that not right?

The Witness: That goes in to balance up the statement.

Examiner Bernhard: It seems to me we have spent enough time on that, gentlemen.

Mr. Loble: O. K.

Q. (Mr. Loble, continuing:) Now, another question that was asked again on redirect that was an extension of what I asked you: You told me, as I recall, you didn't know who made up the deficit prior to back in 1924,—I understood you at least to say that, in the beginning of the examination, and when Mr. Jardine asked you you said that the predecessor of this company made up the deficits. Now is that correct, or do you know? A. Made up,—from 1924 on?

Q. From 1924 on you said the railroad,—prior to 1924? A. Well, it is my knowledge,—according to my knowledge,—and where I got it from, I couldn't say,—but I believe the Great Northern started some time around that time to make advances. This is my knowledge of it.

Mr. Jardine: I don't think he got your question.

Q. (Mr. Lobel, continuing:) I understood you to say that from 1924 on the Great Northern advanced these various accounts, and we finally come up with this huge debt now of \$737,624.22, which includes the bond issue of \$165,000, but before 1924 did the railroad operate at a deficit, and if so, who paid the deficit? A. Well, it did operate at a deficit. Just when the,—just who paid it, I would have to look up the records.

Q. But I understood you to tell Mr. Jardine it was paid by the predecessor of The Valier Company? A. As I recall now, I saw something where an agreement was made between the Montana Western and the Great Northern starting around 1924, where the Great Northern made advances. Prior to that time the deficit must have been made up, so far as I know by the,—probably by the Valier Company,—the Valier Montana Land and Water Company, or one of its predecessors.

Q. Was there a written agreement around 1924 whereby the Great Northern advanced,—made advances to the Montana Western? Was that in writing? A. There is,—I don't know about around 1924.

Q. Well, whenever it was. A. It was around there. There was some correspondence.

Q. I understood you to say a minute ago there was an agreement in writing between the Great Northern and the Montana Western? A. It runs in my mind,—that is some time ago; I haven't checked it up for some time.

Q. Have you that available here for the Examiner, or can you get that agreement between the Great Northern and the Montana Western so we may look at it? A. Oh, it is possible I can find it.

Q. Will you undertake to do so, if possible? A. I will look for it; yes, sir.

Q. Thank you. Now going back of 1924, if there was any deficit, that was paid by The Valier Company, or the Valier Company's predecessor, wasn't it? A. Yes.

Q. And that really any deficit before 1924 was in part paid for by the water users of this community, was it not? A. Just what are you,—

Mr. Jardine: Answer the question whether that deficit, any of it, was paid by the water users? A. No, sir.

Q. (Mr. Loble, continuing:) It wasn't? A. No.

Q. Well, let me ask you if this wasn't correct: That the water users have for a long time been paying a dollar into The Valier Company, and before that, its predecessor, for maintenance?

181 A. Yes, sir.

Q. And that any profit that would inure to The Valier Company from the fact they didn't need a dollar for maintenance would be profit that would then go into the operation of the railroad?

Mr. Jardine: Just a minute. Let me interrupt you here so we can get this straight. That dollar, Lester, I think started in 1929. This deficit was met prior to 1924, and the rate of charge prior to 1929 was fifty cents an acre, and they never operated and maintained the project for fifty cents an acre. There was never any profit before that; and in 1929 the Great Northern was meeting the deficit; so there wouldn't be any money that came out of this dollar an acre that the Pondera Canal and Reservoir Company pay the Valier Company for operating the project, that ever went into the operation of the railroad.

Mr. Loble: Any profit that would be made from the dollar would be made after 1929, is that right?

Mr. Jardine: We only got a dollar from 1929 on. Prior to 1929 we got fifty cents an acre for operating the project and it always operated at a loss. There was a loss of from ten to twenty-five thousand dollars a year in the actual cost of the operation of the project from the time it started up until 1929 when the charge for operation and maintenance was raised to a dollar an acre. At  
182 that time the Great Northern was meeting the deficit.

Q. (Mr. Loble, continuing:) And whatever profit may have occurred then from the commencement of the dollar wasn't used then at all for the payment of any deficit of the railroad; is that right?

A. You are asking me?

Q. Yes. A. No.

Q. You didn't put any money in from The Valier Company until after,—before 1924, is that right, into the railroad after 1924 except what you put in currently,—a short time ago? A. No; Not to my  
o knowledge.

Q. I assume that what counsel says is what you would testify to, that the fifty cents,—so that the record may show it,—the fifty cents

produced a loss for maintenance, is that right? A. That is right.

Q. That is not true of the dollar, however, is it? A. It goes by year, the maintenance.

Q. Some years it produces a profit, doesn't it? A. Some years there was a little profit.

Q. Well, more than a little some years? A. What.

Q. More than a little some years? A. I wouldn't say that.

183 Q. What is the most you ever made?

Mr. Jardine: Just a minute. I think that is getting out of the field of the question of whether or not the Montana Western Railway should be examined,—

Mr. Loble: Well, they are all inter-related.

Examiner Bernhard: I can't see the connection myself, whether the water company was making a profit or not.

Mr. Loble: They own the railroad. Everyone owns everyone else here. They own the railroad, and I think the Great Northern owns the railroad. I think they do. You can get it for a dollar. Well, I will pass the question.

Mr. Jardine: The offer still stands.

Q. (Mr. Loble, continuing:) By the way, did anyone ever offer you a dollar for the railroad? A. No.

Q. Is there any chance of your coming down on that? A. There might be, if it is a good responsible party.

Q. You might come down to a good responsible party? O. K. Thank you, Mr. Palin.

Mr. Booth: Mr. Examiner, we consider the financial reports, the annual reports of the Montana Western filed with the Interstate Commerce Commission,—may they be considered as a part of the record?

184 Mr. Jardine: If it means that the transcript has to show that?

Mr. Booth: No, by reference, I mean.

Examiner Bernhard: The trouble with that,—we were bumped by the Supreme Court on that one time. When you do that, the other side has no opportunity to know just what is going to be relied upon,—no chance to answer that which may be picked up from the annual reports. You may proceed.

Mr. Jardine: Do you want to go on?

Examiner Bernhard: I would like to go until twelve thirty, unless it interferes with your custom here. What do you think? Shall we adjourn now until one o'clock,—or run until twelve thirty and adjourn to one thirty.

Mr. Loble: You usually adjourn at twelve, don't you, Mr. Jardine?

Mr. Jardine: Yes.

Examiner Bernhard: Will one o'clock give you enough time?

Mr. Loble: It is pretty difficult here.



Examiner Bernhard: Adjourn until one thirty,—would that be better?

Mr. Jardine: That is satisfactory.

Examiner Bernhard: We will adjourn until one thirty this afternoon.

(A recess was taken at 12:10 p. m. until 1:30 p. m., Monday, July, 11, 1949.)

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### AFTERNOON SESSION

1:30 P.M.—Monday, July 11, 1949

Examiner Bernhard: We will resume the hearing. You may proceed, Mr. Jardine.

Mr. Jardine: Recall Mr. Palin.

W. F. PALIN, recalled as a witness, testified as follows:

#### Redirect Examination

Q. (By Mr. Jardine:) You are the same Mr. Palin who was on the stand this morning? A. I am.

Q. Do you have a list of the stockholders of the Valier Company furnished you by the Montana Bank & Trust Company of Great Falls, Montana, transfer agent of the Valier Company? A. I have.

Q. And under what date was that list of stockholders compiled? A. March 26th, 1949.

Q. And as of that date does that show all of the stockholders of the Valier Company? A. It does.

Mr. Jardine: Don't take this down, if you please, Mr. Reporter.

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record)

Examiner Bernhard: Back on the record, Mr. Reporter.

186 Mr. Jardine: I may say for the record that I didn't know that the Examiner wanted this information, so I haven't had an opportunity as yet to have copies made to submit in evidence, and all we have is the original which is the only one we have. We will have copies made tonight and submit them in evidence, but the statement is the statement as of March,— A. March 26th, 1949.

Mr. Jardine: Of The Valier Company.

Examiner Bernhard: You will defer the further presentation of that until tomorrow then?

Mr. Jardine: Yes.

Examiner Bernhard: That is all right.

Mr. Jardine: But I thought I would call Mr. Young with reference,—something with reference to the stockholders.

Mr. Loble: At this time it may be identified and used, so far as we are concerned, and copies submitted later,—or it may be offered now. We haven't any objection.

Mr. Jardine: Well, we will offer it now with the understanding that we can submit copies tomorrow,—exact copies for the record.

Examiner Bernhard: This will be for the record, and the other copies will be for the parties?

Mr. Jardine: Yes; that is right. Will you mark this as Applicant's Exhibit No. 6, or identification, Mr. Reporter?

187 (The document above referred to was marked Applicant's Exhibit 6, for purposes of identification, by the Reporter.)

Mr. Jardine: I may say with reference to this, further, that there have been one or two small transfers of stock since that date, and it has been added in pencil on the Exhibit No. 6. If the Court or the attorneys want the transfers included on the copy, why,—but they are very minor.

Mr. Loble: These people are people who own,—

Mr. Jardine: Stock in the Valier Company.

Mr. Loble: Those are water users? Is that it?

Mr. Jardine: Now, they are the owners of the capital stock of The Valier Company.

Mr. Loble: It has nothing to do with the stock that the water users own?

Mr. Jardine: Not at all. The Valier Company is the successor in interest of the company who started the project. The water users are the owners of the capital stock of the Pondera County Canal and Reservoir Company. I offer that in evidence.

Mr. Loble: No objection.

Mr. Jardine: I think that is all, Mr. Palin.

(Witness excused.)

Mr. Jardine: Call Mr. Young.

SUMNER B. YOUNG, was sworn as a witness, and testified as follows:

Direct Examination

188 Q. (By Mr. Jardine:) Mr. Young,—

Examiner Bernhard: Just a moment. I would like to dispose of that if I could. Is there any objection to the receipt of this exhibit, this list of stockholders, in evidence?

Mr. Loble: No.

Examiner Bernhard: It may be received in evidence as Exhibit No. 6.

(Applicant's Exhibit No. 6, heretofore marked for the purpose of identification, was received in evidence.)

Q. (Mr. Jardine, continuing:) Mr. Young, you can state what position you hold with the Montana Western Railway Company?

A. I hold no position with Montana Western Railway Company.

Q. Have you in the past ever acted as counsel, or co-counsel, for the railway? A. I have not, in the past.

Examiner Bernhard: Have not?

The Witness: Have not, in the past.

Q. (Mr. Jardine, continuing:) Well, what position, if any, do you hold with The Valier Company? A. I am a director of The Valier Company, a member of the Executive Committee of the Board of Directors, and also secretary of that company.

Q. You, I think live in,—where? A. Wayzata, Minnesota. That is a hard one,—I will spell it for you,—W-a-y-z-a-t-a. That is a suburb of Minneapolis. It happens to be on the Great Northern Railway, but I don't think there is any connection, sinister or otherwise.

Q. Mr. Young, among the stockholders of The Valier Company is Cargill Securities Company? A. That is correct.

Q. And do you hold any office with Cargill Securities Company? A. I hold no office with them, but they pay me a salary year by year, and I have done considerable law work for them in return for that salary.

Q. And is the same thing true of Cargill, Incorporated? A. Yes, I am one of the assistant secretaries of Cargill, Incorporated, and I am also the senior house attorney for Cargill, Incorporated; in other words, head of their law department.

Q. Among the stockholders of The Valier Company is Cargill Securities Company, which as of March 26th, 1949, owns 3,859 and about one-third shares of the capital stock of The Valier Company. Are you quite familiar with the larger stockholders of The Valier Company? A. I am; yes.

Q. You have met them, or their representatives, have you not? A. Yes; I met quite a few of them.

190 Q. And give us,—and can you give us, in general, a list of those whom you have met, and whom you know something about personally? A. Yes. I first might say a word about Cargill Securities Company, Mr. Examiner: Cargill Securities Company is a Minnesota corporation which was formed in order to liquidate the rather complicated estate of W. W. Cargill, who died twenty odd years ago. The Cargill Securities Company was formed at the request of various banks in Minneapolis, and into Cargill Securities Company went the so-called cats and dogs out of that estate. The Cargill Securities Company has since been continued as



a family holding corporation, in which the McMillans, who are active in the top management of Cargill, Incorporated, are interested, and there ~~in~~ laws, the Cargills, who are also interested in the top management of Cargill, Incorporated, are concerned. Cargill Securities Company found itself, through the estate of the late W. W. Cargill, in possession of numerous shares of stock of the predecessor company of The Valier Company, which was The Valier, Montana, Land and Water Company. Since the reorganization of that company and the formation of The Valier Company, it has purchased further shares of stock of The Valier Company, so its holdings as of now is 3859 and a fraction shares. I wish to state here and now Cargill Securities Company has no connection either with the Great Northern Railway Company, or the Northern Pacific Railway Company, or any of their subsidiaries.

191 The next big stockholders you will find on the list,—  
 Examiner Bernhard: No interlocking directorates?

The Witness: No; no interlocking directorates.

A. (Continuing:) Mr. McMillan,—John H. McMillan, President of Cargill, Incorporated, at one time was a director of the Chicago & Northwestern Railway Company, but he is not now. I believe he is president and director of another small railroad, which is the Minnesota Western Railway Company which runs out of Minneapolis about one hundred and fifteen miles to a place called Gluck, but that railroad has no relation with the Great Northern or any of its subsidiaries whatever.

The next big stockholder I am acquainted with is Otto Bremer, who is the grand old man of banking over in St. Paul. He holds in his own name three hundred and ninety and a fraction shares of stock of The Valier Company. His nominee, Mr. B. O. Bishop, who represents the Bremer interests on the Board of Directors of The Valier Company owns five shares. That is to qualify Mr. Bishop as a director. I know of no connection, direct or indirect, between Otto Bremer and the Great Northern Railway, the Northern Pacific Railroad, or any of their associated or subsidiary companies.

Edward W. Freeman, a resident of Yonkers, New York, is a director of The Valier Company. He owns two hundred and forty-nine shares and a fraction. I know of no connection whatsoever between Mr. Freeman and any of the railroads mentioned. Mr. Freeman's business is the sugar business, where he has rather  
 192 large interests in Yonkers, New York,—I have forgotten the exact name of his sugar company.

Another large stock holding is George W. Perkins, also down in New York, two hundred and fifty shares. I have forgotten whether that is fractional, or whether it is two hundred and fifty even. George W. Perkins is related to Mr. Edward W. Freeman by marriage, in fact, I think Mr. Perkins is Mr. Freeman's father-in-law.



Mr. Freeman usually shows up with the proxy of George W. Perkins at directors' and stockholders' meetings. I don't know offhand whether George W. Perkins has any connection with the railroads I have mentioned, but I doubt if he has even the remotest connection.

Another large stockholding that I am acquainted with through having called upon one of the trustees that administers the estate, is the estate of William C. Peyton; the trustee who takes care of that estate is a lawyer on Wall Street, New York, by the name of Coulson,—Colonel Coulson. I don't know where he got that colonel's title, but I think back in World War 1. I have called on him and discussed matters of The Valier Company with Colonel Coulson. I haven't any knowledge of the person or persons with which he may be connected, but so far as I know there is no connection between that stockholding and the Great Northern Railway Company, or the Northern Pacific, or any of their associated companies.

Examiner Bernhard: Would you give us the amount of 193 that?

The Witness: The amount is two hundred and fifty-one shares and a fraction, your Honor.

A. (Continuing:) I believe Mr. Freeman is also related to the former Mr. Peyton. Mr. Peyton is deceased. I think there is a connection in through there.

There is another large stockholding, as stockholdings go in this company: That of George W. Bacon, in New York. He owns one hundred and seventy-eight shares, plus. When I say "plus," I mean a fraction. Some of these fractional shares go out to the fifth decimal place. I believe that he is one of the gentlemen who is connected with Ford, Bacon and Davis, who were the engineering firm that had to do with the construction of the irrigation company out here. I don't know Mr. George W. Bacon personally.

I have met Mr. A. F. Conrad,—that is Art Conrad,—who lives down in Great Falls. He owns 156.378 shares. I do not know offhand what connections he has. He may be in the room here and could testify as to whether or not he is connected with the Great Northern Railway or any of the others, but I strongly doubt it. I have never asked him who he is connected with. I think that he got those shares from the earlier Conrads who were connected with the Conrad Land and Water Company, and I don't think he has any association with any of these railroads.

Then the Conrad National Bank of Kalispell owns two 194 hundred and twenty-nine and a fraction shares of stock. I have no information first hand as to whether or not they are connected with the Great Northern Railway or the other railways mentioned here, but I am inclined to doubt that they do, too.

Examiner Bernhard: At what place was that?

The Witness: Kalispell, Montana.

Examiner Bernhard: How do you spell it?

The Witness: That is spelled K-a-l-i-s-p-e-l-l.

A. (Continuing:) I don't think there are any large stockholders that I know anything about, your Honor, other than these. You will find, I believe, if you will examine the list of stockholders that the remaining holdings are in rather small amounts; and since Cargill Securities all by itself owns something better than sixty per cent of the stock of The Valier Company, if the Great Northern Railway Company owns all the rest of the shares, as certainly it does not, it could not say that it controlled in any way, shape or form the destiny of The Valier Company.

Examiner Bernhard: Cargill, Incorporated, you mentioned,—does it hold any shares?

The Witness: It does not, your Honor. The officials of Cargill, Incorporated, which is a grain concern, your Honor, are also high officers of Cargill Securities Company, the personal holding corporation, the McMillans and the Cargills, and that is the 195 connection.

Examiner Bernhard: I see.

Q. (Mr. Jardine, continuing:) Well, Mr. Young, so far as you know, do any of the stockholders in The Valier Company have any interest, so far as you know, any interest of any nature or description in the Great Northern Railway Company? A. They do not.

Q. So far as you know? A. So far as I know.

Q. If there is any of these stockholders that have any interest, it is unknown to you? A. It is certainly unknown to me.

Mr. Jardine: I think that is all.

#### Cross Examination

Q. (By Mr. Loble:) Mr. Young, I see for the first time the list of stockholders of The Valier Company,—

Mr. Loble: I will read the list,—may I?

Examiner Bernhard: Is it necessary?

Mr. Loble: I want to inquire about some other things.

Examiner Bernhard: You mean you are going to pick out just certain ones?

Mr. Loble: No; not so many of them.

Examiner Bernhard: You want to read the whole list?

Mr. Jardine: It is in evidence.

Mr. Loble: There is about sixty odd, I believe.

196 Examiner Bernhard: You merely encumber the record.  
Can't you,—

Mr. Loble: I don't know how I can examine otherwise, but I will try.

Q. (Mr. Loble, continuing:) All of the stockholders of The Valier Company, with the exception of A. F. Conrad who has a hundred and fifty-six point something shares, the Conrad National Bank of Kalispell that has two hundred and twenty-nine, and Bob Gordon of Great Falls who has six point eight,— A. I didn't mention Bob Gordon.

Q. I know you didn't mention him,—but all of the stockholders with the exception of those are non-residents of Helena, aren't they? A. Non-residents of Helena?

Q. I mean, non-residents of Montana? A. I don't know off-hand. I think the list would speak for itself.

Q. That is what I was going to ask you. The addresses of practically all of the stockholders are either in care of Chase National Bank, or 45 Wall Street, or St. Paul, or many of them 11 Broad Street, some in New York; there are only three of them I see that are listed as an address in Montana; is that correct? A. I can't tell without looking at the list.

Q. Look at it.

197 Mr. Jardine: I submit the record is in evidence and speaks for itself. I don't know why the witness should have to testify.

Examiner Bernhard: I would think so. A. Do you wish me to answer, your Honor, or let it go?

Examiner Bernhard: You may answer it, if you can? A. Well, from a hasty glance at this record here I would say that outside of The Valier,—outside of the ones which I have specifically mentioned as being stockholders who are domiciled in Montana, that most of the rest are domiciled outside of Montana. I can tell you now that the biggest stockholdings, if you are counting the shares, are right in Minneapolis, Minnesota. After that comes the stockholdings that are concentrated in the City of New York, and I think third on the list, the last I knew, was the stockholdings of the Montana residents; then of course they are scattered all the way out to the west coast and back into the old parts of the east.

Q. (Mr. Loble, continuing:) Now, will you answer the question as to whether there are any more than three stockholders living outside the state of Montana? A. Any more than three stockholders living outside the state of Montana?

Q. Living in,—domiciled in Montana?

Mr. Jardine: I still say that the record is the best evidence.

198 Mr. Loble: We were rather liberal with this witness. We let him go on with,— A. Do you want to find more than three outside of the State of Montana, if you can? Is that it?

Mr. Jardine: No.

Q. (Mr. Loble, continuing:) Yes; try to find them. A. I don't find more than three outside,—in Montana, if that is what you want.

Q. That is what I asked you. A. I don't find any more than three Montana stockholders.

Q. W. S. Cargill is shown here on the 26th of April, 1909 as one of the incorporators of the Montana Western Railroad Company. Is that the W. S. Cargill you referred to? A. No; W. W. Cargill, I referred to, is the estate.

Q. Who is W. S. Cargill? A. I think that is his son.

Q. Now, what connection has he with either Cargill Securities Company or Cargill,—what is the other name? Cargill Investment Company? Or Cargill, Incorporated? A. Cargill, Incorporated, and Cargill Securities Company.

Q. Yes. What connection has W. S. Cargill with either one of these companies you just mentioned? A. None at all; he is dead.

Q. What did he have? A. I don't know what connection he had with either one before that.

199 Q. Well the Cargills were,—through W. S. Cargill were the moving factors in the establishment of The Valier Company and the establishment of the Montana Western Railroad, weren't they? A. They were not. W. S. Cargill, as I understand it, was instrumental in helping to form first company out here, namely, the Conrad Land and Water Company, and I believe he died a few years after that.

Q. He is an incorporator of the Montana Western Railroad, or was? A. It says so here. I don't know it of my own knowledge, but it says so here.

Q. Your counsel offered it as an exhibit, and I assume, being a lawyer, you would take that as true, wouldn't you? A. Certainly.

Q. Well, he was,—W. S. Cargill was one of those who initiated the founding of the Montana Western Railroad, wasn't he? A. I believe that is correct.

Q. Now that is of the same family that owns the Cargill Securities,—the same family, is it not? A. Yes; one of his relatives is still alive, Austin S. Cargill. He is the only Cargill connected with us now.

200 Q. Yes. And what relation was this man, W. S. Cargill, to the one who died that you referred to,— A. W. W.?

Q. W. W. A. I believe W. S. was the son of W. W.

Q. So there was that connection between them at the time,—that relationship was such that the Cargill family was interested in the establishment of the Montana Western Railroad, wasn't it? A. Certainly.



Q. Now, the Cargill, Incorporated, is a dealer in grain, is it?

A. It is; yes.

Q. And one of the largest in the world, is it not?

Mr. Jardine: Just a moment. To which we object on the ground it is incompetent, irrelevant and immaterial.

Mr. Loble: I don't think there is anything incompetent about it. I don't see anything objectionable about that.

Mr. Jardine: Whether it is the biggest or smallest makes no difference in this matter.

Examiner Bernhard: The exhibit was offered at the suggestion of the Examiner to see if there was any control, direct or indirect, of this railroad by the Great Northern Railway Company. Let us not get too far astray on this exhibit.

Mr. Loble: Let me ask that question, any way.

201 Mr. Loble: If you can answer it you may. A. I believe that we are about the fourth, or third, largest in the world.

Mr. Loble: Is Mr. Young going to be back on the stand?

Mr. Jardine: Yes.

Mr. Loble: I will not examine further if he is coming back for something else. A. I will be back.

Mr. Loble: I will be glad to see you. I will be waiting for you.

Examiner Bernhard: Any other cross examination of this witness? If not, you are excused for the present, Mr. Young.

(Witness excused.)

Mr. Jardine: Call Mr. Atwood.

C. E. Atwood, was sworn as a witness and testified as follows:

#### Direct Examination

Q. (By Mr. Jardine:) You can state your name, please. A.

C. E. Atwood.

Q. And, Mr. Atwood, how long have you resided in Valier? A. Forty years.

Q. When you came here first, Mr. Atwood, with whom were you employed? A. With the Conrad Land and Water Company.

Q. You will have to talk up. And that was the company that built the ditches and the dams here on the Valier Irrigation Company, was it not? A. Yes.

202 Q. That is, they built it through contract? A. Yes; they and their successors.

Q. They were the originating company? A. That is right.

Q. And you were employed by them in what capacity, originally? A. Draftsman.

Q. Are you a college graduate? A. I am.

Q. From what college? A. University of Michigan.

Q. And what sort of a degree have you, Mr. Atwood? A. Bachelor of Science, Civil Engineering.

Q. Did you continue to work for the Conrad Land and Water Company and then for its successor Valier, Montana Land and Water Company, and then for its successor, The Valier, Montana Land and Water Company, during the time that you have been here? A. Yes.

Q. And when did you start to work for the Montana Western Railway Company? A. May 1st, 1928.

203 Q. And from the time you came here until May 1st, 1928, were you employed by either the Conrad Land and Water Company, Valier, Montana Land and Water Company, or The Valier, Montana, Land and Water Company, continuously? A. I was.

Q. At the time you started,—or left The Valier, Montana, Land and Water Company to work for the Montana Western Railway Company, what position did you hold with The Valier, Montana, Land and Water Company? A. Chief Engineer.

Q. And you had been that for how long? A. Twelve years.

Q. And when you started working for the Montana Western Railway Company in what capacity did you work for them? A. General Manager.

Q. And have you continued to occupy that position with the Montana Western Railway Company since you started to work for them in 1928? A. Yes.

Q. And you are now holding that position, are you not? A. Yes, sir.

Q. You are also at the present time a director of the railway, are you not? A. Yes, sir.

Q. Holding one of the qualifying shares? A. Yes, sir.

204 Q. You assisted in preparing, and did practically all of the work in preparing the Return to the Questionnaire, did you not, Mr. Atwood? A. I did.

Q. It was all prepared by you, or by those under you at your direction and request? A. That is right.

Q. And the Exhibit "A" attached to the Return to Questionnaire, and Exhibit "B" attached to Return to Questionnaire, and Exhibit "3" attached to the Return to Questionnaire, were all prepared either by you, or at your,—or under your direction and at your request? A. That is right.

Q. And do they represent the,—insofar as they purport to represent, do they represent the affairs of the company as disclosed by the books of the company, either the ledger sheets, or the records in your office,—the original records in your office? A. They do.

Mr. Jardine: I offer the Exhibits "A," "B," and "C" as,—I think it would be "8," "9" and "10," in evidence at this time.

Mr. Loble: That are attached to the Questionnaire?

Mr. Jardine: They are attached to the Questionnaire.

Mr. Loble: No objection. I don't know as you need them,  
205 but if you want them for the record,—

Mr. Jardine: Counsel and I both thought for the convenience and benefit of all parties I would furnish them. He has them already prepared.

Mr. Loble: Thank you.

(The document heretofore referred to was marked Applicant's Exhibit 8 for pu pose of identification, by the Reporter.)

Examiner Bernhard: The document you are now offering is a copy of the railway's balance sheet,—general balance sheet of March 31st, 1949?

Mr. Jardine: Yes, Mr. Examiner.

Examiner Bernhard: It will be admitted as Exhibit No. 8.

Mr. Loble: Is that No. 8?

Mr. Jardine: Yes.

(Applicant's Exhibit 8, heretofore marked for identification, was received in evidence.)

Mr. Jardine: And may the Reporter mark this document as Exhibit No. 9, for identification?

(The document above referred to was marked Applicant's Exhibit No. 9 for purposes of identification by the Reporter.)

Examiner Bernhard: The document you are now offering, which will be Exhibit No. 9, is the Income Account of the Montana Western Railway Company for the years 1944 to 1948, inclusive, and for the first three months of 1949?

206 Mr. Jardine: Yes.

Mr. Loble: That is No. 8.

Examiner Bernhard: No. 9. It is received in evidence as Exhibit No. 9.

(Applicant's Exhibit No. 9, Witness Atwood, heretofore marked for identification, was received in evidence.)

Mr. Jardine: And may this map be marked as Applicant's Exhibit No. 10, for identification?

(The document referred to was marked Applicant's Exhibit 10, Witness Atwood, for identification.)

Mr. Jardine: And we offer in evidence Applicant's Exhibit No. 10 for identification.

Mr. Loble: No objection.

Examiner Bernhard: The exhibit you offer as Exhibit No. 10 consists of a map describing the area served by the Montana Western Railway Company, is received as Exhibit No. 10.

(Applicant's Exhibit No. 10, Witness Atwood, heretofore marked for identification was received in evidence.)

Q. (Mr. Jardine, continuing:) Mr. Atwood, in the Return to Questionnaire, on page two, you described in general in the first paragraph thereof the location of the railroad, did you not? A. I did.

207 Q. In connection with the location of the railroad, at a point about three and two-tenths miles north of Conrad it joins with the tracks of the Great Northern Railway? A.

Yes, sir.

Q. Originally, the Montana Western Railway Company's line went into the town of Conrad, did it not? A. That is right.

Q. Can you tell us in general when it was that the new arrangement was made to transfer,—or to take up those tracks that were joined and connected with the Great Northern Railway at a point three and two-tenths miles north of Conrad? A. If I remember rightly, it was in the fall of 1927.

Q. That was immediately prior to the time that you,— A. Yes.

Q. And at the present time then you operate, at least in part, your trains over the line of the Great Northern Railway Company from the junction three and two-tenths miles north of Conrad into the town of Conrad? A. We do.

Q. And in general how many trips a day does your train make between Valier and Conrad? A. One round trip.

Q. You leave Valier in the morning? A. At six fifty-five.

Q. And arrive at Conrad? A. At eight fifteen.

268 Q. In the morning? A. Yes.

Q. And you leave Conrad when? A. Ten fifteen.

Q. And you arrive at Valier when? A. Eleven thirty.

Q. And what, in general, is the nature of the train you operate, with reference to locomotives and cars? A. It is a mixed train, passenger and freight, and we use,—most of the time we use gasoline-electric for motive power.

Q. You have what kind of engines? Do you have a gasoline-electric engine? A. Gasoline-electric engine.

Q. And what other kind of motive power do you have? A. Steam.

Q. Steam. And when is it you use the steam motive power? A. When we have more than we can carry,—more than we can pull with the gas-electric, and also in the winter time when snow conditions make it such that the gas-electric can't run.



Q. The gas-electric is built in such a way that when the snow gets a little deep on the tracks it is impossible to operate it; is that correct? A. That is right.

Q. How deep does it have to be, or approximately how deep? A. Before,—when it should be stopped?

Q. Yes; when you can't operate it successfully? A. Well, if it is light snow, I would say about two feet. If it is packed at all, a foot. We will do well if we can handle that.

Q. Isn't there something in connection with the gas-electric that is just a short distance above your track? A. Yes; the motor housings are only three inches above the rail.

Q. Above the rail? A. Above the rail; yes.

Q. That is the housings for the motors for your traction? A. That is for your traction motors.

Q. And the train you operate is a combination freight and passenger train? A. Yes, sir; that is right.

Q. You also carry mail from Conrad to Valier, and from Valier to Conrad, do you not? A. Yes, sir.

Q. Your basic contract for mail, do you know how much offhand a year that is,—just in round numbers? A. It says right here (indicating). It is about twenty-nine hundred dollars.

Q. From your knowledge of the general history of the Montana Western Railway Company can you tell us who originally constructed the Montana Western Railroad? A. What company let the contract?

Q. Yes. A. The Conrad Land and Water Company, to start with.

Q. And it has been in operation ever since,—do you know what year it started operating? A. 1909.

Q. And, Mr. Atwood, from the time that you started in as General Manager of the Montana Western Railway Company, have the deficits each year since you started operating it in 1928 been met by the Great Northern Railway Company? A. They have.

Q. You weren't manager of the Montana Western Railway Company at the time the Great Northern Railway Company started to meet the deficits, were you? A. No, sir.

Q. But ever since you have operated it they have met your annual operating deficits; is that true? A. That is right.

Q. Now, with reference to this line, will you give us in general the present status of the maintenance of the line, and a description in general of just the nature and physical description of this railway? A. From the standpoint of maintenance, do you mean?

Q. Yes; I mean from the standpoint of a physical description of the roadbed. A. Well, it was originally built for the purpose of hauling in construction materials and settlers' effects.

Examiner Bernhard: Will you speak a little louder, please, Mr. Atwood? A. I say, it was originally constructed for the purpose of hauling in construction materials for the project, and emigrant ~~moveables~~, and things of that nature; and it was not graded up. It was laid right on the sod, except in ~~cuts or across coulees~~, and those cuts were made so narrow that you can't get a tie in without digging a trench alongside of the cut, and there are no ditches on the side, or weren't originally,—we have a few now,—and at the present time it is in fair condition. The bridge over the Dry Fork is in very poor condition. The rest of the line will last this year.

Q. When you say it is in "fair condition," it is in fair condition with reference to its nature of construction? A. That is right.

Q. As you said before, except where necessary; there are no fills,—it is laid on the surface of the ground? A. Yes.

Q. In some places it was necessary to build fills? A. That is right.

Q. And where they made cuts it isn't wide enough so that  
212 you can pull a tie out and replace it,—or hasn't been except—where you have,— A. And where it was laid right on the sod, right on the prairie, the ties have settled down into the sod until you have to dig a trench to get them out.

Q. Has there been any work done on the railroad, for instance, in the nature of rebuilding of the railroad, or is the work that has been done simply the repair of the railroad in the condition that it originally was? A. It has been mostly maintenance.

Q. Is that practically wholly maintenance? A. At least seventy-five per cent of it.

Q. And outside of maintenance, what work has been done? A. There has been a few places where the track has been raised, a small grade put in, and some ditches put in. There has been one cut widened, with the track sliding.

Q. But the work primarily over the period of years you have been in charge of the railroad has been maintenance, work? A. Yes.

Q. You said that the bridge over the Dry Fork was not in very good condition at the present time. Can you tell us why that was?

A. Because of the flood in June last year.

Q. And did that do serious damage to this structure? A.  
213 It took out one bent, and loosened the piling in two.

Q. And was it necessary to do some repair work in connection with it before you could operate again? A. We had to have one set of piling driven, one bent.

Q. And in order to safely operate the railroad at the present time, should additional expenditures be made on this bridge? A. There should; yes.

Q. And have you estimated what it would take, in round numbers in money, to repair that structure, or the bridge over the Dry Fork, so that it would be in suitable operating condition, compared with its past operating condition? A. The least it would cost to put in operating condition, so it wouldn't be jeopardized in case of flood, or something like that, would be five thousand dollars.

Examiner Bernhard: What were your qualifying words? I didn't hear you?

The Witness: I said the least you could spend on it, and still have it so a flood wouldn't be liable to take it out, would be five thousand dollars.

Examiner Bernhard: So a flood would not be liable to take it out?

The Witness: That is right.

Q. (Mr. Jardine, continuing:) And with reference to the other repairs and maintenance, will you tell us in general what the condition of the track is at the present time, and what should  
214 be done at the present time in connection with present repairs or maintenance that are really required? A. Well, we should have five thousand ties in the line, which we aren't going to get.

Q. You should have what? A. We should have five thousand new ties put in.

Q. And how many ties do you normally replace a year on this railroad? A. Anywhere from four thousand to seven thousand.

Q. And this year there should be a replacement, you say, of five thousand? A. Five thousand.

Q. Would that cover the whole of the year? A. Yes.

Q. Now, is there any other maintenance requirements that you think of at this time? A. One culvert to be put in.

Q. Where is that? A. Down beyond Manson.

Q. Do you have a general idea what it would cost to do that? A. Yes. We have the pipe on hand.

Q. And about what would that cost? A. I haven't figured it up.

Q. Can you give it in round numbers? A. About one.  
215 hundred and fifty dollars.

Q. Do you know what it has cost you in the past to replace ties? A. Yes. If I can refer to those figures?

Q. Yes; you can. You have taken those figures from your records, have you not? A. Yes; they are right from the records.

Q. What was the cost of replacement? A. Treated ties cost \$2.86 in place, apiece.

Mr. Booth: Was that \$2.86? A. Yes. And untreated ties cost us \$2.17.

Q. (Mr. Jardine, continuing:) That is the cost of the tie, and the cost of putting it in place in the roadbed? A. That is right.

Q. And removing the old tie? A. Removing the old tie and tamping the new tie in.

Q. Now, can you tell us in general the condition,—I will withdraw that. Can you tell us what the rolling stock of the railroad consists of? A. We have one flat car, not serviceable for inter-line traffic at all, and,—you want the motive power, too?

Q. Yes. A. Gasoline-electric, six hundred volt, one hundred and seventy-five horsepower gasoline engine; it weighs seventy-two thousand pounds; and a steam locomotive, fifty-four tons 216 on the drivers,—three sets of drivers.

Q. And that is all of the railroad's rolling stock? A. Yes.

Q. And from whom was that purchased? Do you know? A. The steam locomotive was purchased from the O. R. & N.

Q. That is a railroad over in Washington and Oregon? A. Yes; it is now the Union Pacific. And the gasoline-electric was purchased from the Great Northern; and the flat car, I don't know who that was purchased from. It was there when I came.

Q. Now, do you have a roundhouse, or stall, or whatever,—what do you call that? A. Well, we call it a roundhouse, but it is a rectangle.

Q. Can you tell us the weight of the rails in the track? A. Fifty-eight and sixty pounds per yard.

Examiner Bernhard: Fifty-eight and sixty pounds per yard?

The Witness: Yes, sir.

Q. (Mr. Jardine, continuing:) I think you show the roadbed consists of fifty-five thousand No. 3 untreated cross-ties? A. Yes, sir; that is right,—some of them are treated.

Q. Some of them are treated at the present time. Could you say what per cent, or could you give us that figure? A. Out of the fifty-five thousand, about six thousand.

Q. And with reference to the deterioration in ties, is it rapid or slow? A. There has been an average replacement required on untreated ties of about seven or eight years. 217

Q. And for treated ties, how long? A. Of course, I can't tell you from experience on this line, but they usually run from twenty to twenty-five years.

Q. Is there any ballast on the railway? A. Very little.

Q. And is there any drainage on the railway bed to any extent? A. Very little.

Q. Now, you estimated the salvage value of the railroad, I think, Mr. Atwood, at \$41,643.00,—I think you will find that on page five of the Questionnaire. A. Page what,—did you say? Yes, sir.

Q. That included \$1643.00 which you estimated as the value of the land? A. Yes, sir.

Q. The balance of the salvage value is the railroad, and what does that consist of, that salvage value? A. The rails and angle



bars and bolts, switch stands, tie plates, locomotive, gas-electric.

Q. From your experience you estimate that is all that the salvage value of the railroad would be? A. That is all I would want to put it at; yes, if sold for scrap.

218 Q. What was that last? A. If it were sold for scrap.

Q. Well, do you think it could be sold for anything else? A. Possibly, but I wouldn't want to commit myself as being able to sell it.

Q. Do you know of any place it could be sold? A. No, I don't.

Q. Can you tell us the stations on the Montana Western Railway, commencing with Conrad? A. Conrad; Montana Western Junction; Manson; Williams; and Valier.

Q. And those stations, they are listed in paragraph six,—or on page six, in answer to Question 8 of the Questionnaire; is that correct? A. Yes, sir.

Q. Now, in connection with Exhibit No. 10, I wonder if you would refer to that,—it is Exhibit "C" to your report,—to return to Questionnaire. You have made a map of the area, the approximate population, and the trade area served by the Montana Western Railway Company; isn't that correct? A. That is right.

Q. Can you tell us in general the description of the boundaries of the territory that you figured that the Montana Western Railway Company served,—or serves?

Examiner Bernhard: Is that necessary, when it is all depicted here?

Mr. Jardine: Well, I don't know. Do you want it in there?

Mr. Loble: I don't think it is necessary. We have it right in front of us.

Q. (Mr. Jardine, continuing:) Now, in connection with the answer to Question 10, the detailed statement of the nature,—location and nature of the highways available for the movement of traffic now handled by the line of the common carrier; truck and bus service on such highways, if any, you have answered that question and referred to Exhibit "C," and as I understand in that answer, in the first paragraph,—if you will check your record,—on line third from the bottom of the first paragraph, it says, "in the territory north about three miles east of the east boundary." The three miles should be five miles, should it not? A. That is right.

Mr. Jardine: We ask leave to amend the Questionnaire accordingly.

Mr. Loble: Where is that? On what line?

Mr. Jardine: The third line from the bottom of the first paragraph, page three, where it says, "about three miles," should be "about five miles."

Mr. Loble: O. K.

Q. (Mr. Jardine, continuing:) And on the next to the  
 220 last paragraph in answer,—which is really the first full  
 paragraph on page ten, on the third line from the bottom it  
 says, “three miles,”—that is the first full paragraph on page ten,  
 the third line from the bottom,—or page eight, I beg your pardon,  
 page eight, it is the first full paragraph, the third line from the  
 bottom it says “three miles,” that, too, should have been “five  
 miles.” A. It should have; yes.

Mr. Jardine: And we ask leave to amend accordingly.

Mr. Loble: O. K.

Q. (Mr. Jardine, continuing:) Now, in answer to “The nature  
 of the industry and the tributary territory set forth in page eight,  
 Question No. 11, you have given the description of the,—on page  
 nine, I think, Mr. Atwood,—a description of the industries, or lum-  
 ber yards and mercantile houses and so forth in the town of Valier?  
 A. That is right.

Q. And that was as of immediately prior to the date this Ques-  
 tionnaire was prepared? A. Yes.

Mr. Jardine: We have that. If it is necessary to offer it in evi-  
 dence, we can offer it in evidence.

Mr. Loble: If it is in the Questionnaire, we don't see any reason  
 for offering it.

Examiner-Bernhard: I see no reason for repeating it.

Q. (Mr. Jardine, continuing:) Mr. Atwood, in answer, on  
 221 page Question No. 11 of the Questionnaire, you have re-  
 cited that for the past five years products of agriculture  
 moved off the line have constituted ninety-seven per cent of the  
 total tonnage so moved? A. That is right.

Q. That means of the total tonnage moved off the line in the  
 last five years has been,—ninety-seven per cent has been products  
 of agriculture? A. Yes.

Q. And that consists in general of what? A. Wheat, oats, barley.

Q. Mustard? A. Mustard seed.

Q. And a small tonnage of beets? A. Very small; yes.

Q. Now, of all the tonnage moved off the line,—or moved either  
 from Conrad to Valier or intermediate points, or from Valier to  
 Conrad, inbound and outbound freight, the products of agriculture  
 during the last five years have constituted, as you show, ninety-one  
 per cent of all the traffic moved over,—that is, the freight traffic  
 moved over the line; is that correct? A. Yes, sir; that is right.

Q. That is ninety-one per cent of inbound and outbound traffic?

A. Both.

222 Q. Now, in answer to Paragraph Twelve, you have shown  
 the passenger revenue on this line from the year 1944. Mr.  
 Atwood, that shows a decided decrease in use of the line for passen-

ger traffic. Is that decrease still continuing? A. Yes; it appears to be.

Q. Has there been, since you started in as General Manager of this company in 1928, has there been pretty much of a successive decline in passenger traffic? A. Yes, there has.

Q. And is that particularly noticeable in the last few years? A. Yes, sir.

Q. I think you show in connection with your answer, and on page twelve, that you do have the postal service and receive a base rate of \$2837.00 per annum for transportation of ingoing and outgoing mail? A. Yes.

Q. And that is through contract with the United States? A. That is right.

Q. Have there been efforts made in the past to have that contract cancelled? A. There has. Several times they have tried to have the contract cancelled and take over with a truck.

Q. Has that application ever been made by the railroad company, or by others who wanted to,— A. (Interposing:) It was made by others. The railroad company never asked for it.

223 Q. At any rate, at the present time you still have the mail contract? A. Yes; we have.

Q. You don't care any express over the line? A. No; we don't.

Q. The express that comes in from out of the territory and that comes over this line is carried as freight over the Montana Western? A. Yes, sir.

Examiner Bernhard: May I ask a couple of questions at this point?

Mr. Jardine: Yes.

Examiner Bernhard: If the passenger traffic were discontinued and you were relieved of all responsibility of carrying passengers, would there be any considerable saving to the railroad? A. No; there wouldn't be so much.

Examiner Bernhard: Would you be prepared to give an estimate as to approximately what it would be?

The Witness: No; I couldn't do it right away. I would have to look it up.

Examiner Bernhard: Could you save a thousand dollars a year?

224 A. Oh, no. The expenses involved in that is the cost of the tickets, and the cost of filing a tariff, and we haven't filed a tariff for,—I don't know how many years. It has been ten years or better.

Examiner Bernhard: It is all intrastate traffic?

The Witness: That is right,—some of the passengers go out of the state.

Examiner Bernhard: You consider the mail contract a profitable one?

The Witness: I have.

Examiner Bernhard: All right. That is all I have at this time.

Q. (Mr. Jardine, continuing:) As long as you have to run the trail from here to Conrad, isn't it of a slight benefit, at least, to carry passengers? A. Well, yes, it is pretty nearly clear profit. We would have to carry the coach anyway, and the weight of the passengers don't amount to anything.

Q. Well, what I am getting at is: If the passenger traffic were cancelled, it would be a loss to the railroad? A. Yes; you would lose that revenue, whatever it is.

Q. You would lose whatever revenue the passenger traffic brings in,—whatever the net revenue is, and there is a net revenue from passenger traffic, that is, over and above the cost of your tickets and your cost, maybe of collecting? A. That is right.

225 Q. And when I say "net revenue," it isn't any net revenue in the end, but you do make more money by carrying passengers than if you didn't carry them? A. Take in more gross revenue.

Q. Considering the expense of carrying the passengers? A. That is right.

Q. Now, with reference to the freight tonnage handled over the line since,—in answer to question on page eleven, you have set forth the applicant's freight tonnage carried over applicant's line from 1947, 1948, into the period January 1st to March 31st, 1949, in answer to that Questionnaire, and, Mr. Atwood, you have also prepared, have you not, a statement of the revenue tons carried over the line since the year 1933 up to and including the year 1948, also showing the total operating revenue? A. That is right.

Q. And the total cost of operations during that period of time? A. Yes, sir.

Q. You have prepared that? A. I have prepared that.

Q. These figures are prepared from the original books of entry of the Montana Western Railway Company; are they not? A. They are.

Q. And were prepared by you? A. By me; yes.

226 Examiner Bernhard: How many pages to this exhibit?

Mr. Jardine: That is the original. We ask that that paper be marked Exhibit No. 11, I think it is.

Examiner Bernhard: Consisting of how many pages?

Mr. Jardine: Consisting of three pages. Exhibit 11 consisting of three pages,—how do you want them numbered? "A," "B" and "C," or,—

Examiner Bernhard: No, they will all be Exhibit No. 11.

(The document referred to was marked for purpose of identification Exhibit No. 11, Witness Atwood, by the Reporter.)



Mr. Loble: May I inquire, Mr. Jardine, before the exhibit is offered? In your Questionnaire on page thirteen you give the years 1928, 1929 and 1930, then you skip to 1946, 1947 and 1948. In this exhibit that you offer, you go from 1933 to 1939. 1931 and 1932 are omitted, and from 1939 to 1946 are omitted. Am I correct in that?

Mr. Jardine: No, there is,—

Mr. Loble: Is there another page?

Mr. Jardine: There is another page.

Mr. Loble: Oh, the second page. Maybe the first page gives 1931.

A. It starts in 1933.

Mr. Loble: Just 1931 and 1932 that are missing now? A. It started in 1933.

227 Mr. Loble: Why are 1931 and 1932 missing?

Mr. Jardine: Well, I will tell you: I did that. I just asked him to prepare that, and to go back a period of fifteen years, and I asked him to prepare it without reference to the Questionnaire. I imagine 1931 and 1932 will probably show a whole lot worse situation than any of the other years on there, and we will prepare them, if you want, and submit them.

Mr. Loble: I don't care particularly whether they are prepared or not. I just wanted to find out if there was any particular reason for it.

Mr. Jardine: I simply asked him to prepare it back for fifteen years, to have a picture of it.

Examiner Bernhard: Any objection to the receipt of this document?

Mr. Loble: No; no objection.

Mr. Booth: No objection.

Examiner Bernhard: It may be received as Exhibit No. 11.

(Applicant's Exhibit No. 11, Witness Atwood, heretofore marked for identification, was received in evidence.)

Q. (Mr. Jardine, continuing:) In connection with Exhibit No. 11, Mr. Atwood, you have on the last page,— A. I have it here.

Q. On the last page of that exhibit you have shown that  
228 during that period of time there has been an average deficit for those years of \$18,672.10 a year in operating the Montana Western Railway?

Mr. Loble: \$18,672.00?

Mr. Jardine: Yes. A. Yes, sir.

Mr. Loble: That covers what years, Art?

Mr. Jardine: 1933 to 1948, inclusive, and that is the average deficit, taking the total of those years and averaging the deficit.

Q. (Mr. Jardine, continuing:) And during that time the deficit

has been made up by the Great Northern Railway Company? A. That is right.

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record, Mr. Reporter.

Q. (Mr. Jardine, continuing:) Mr. Atwood, the other day in order to show the relative freight traffic for a period of five years, I asked you to prepare an exhibit which would show the freight traffic from 1924 to 1928, and on the same exhibit show the,—did I say freight traffic?

Mr. Loble: Yes.

Q. (Continuing:)—passenger traffic from 1924 to 1928 with reference to the number of passengers carried, and the passenger revenue, and then, by way of comparison, to show the passenger traffic for the years 1944 to 1948; and you prepared that exhibit, did you not, at my request? A. I did.

Q. And from the original records and books of the company? A. That is right.

Mr. Jardine: We ask that document be marked as Exhibit No. 12.

(The document referred to was marked Applicant's Exhibit No. 12, Witness Atwood, for purpose of identification.)

Mr. Loble: There is no objection.

Q. (Mr. Jardine, continuing:) And showing you Exhibit No. 12, Mr. Atwood, is that the exhibit that you prepared from the records and books of the company? A. It is.

Q. And does that truly reflect the condition as shown on the records and books of the company? A. It does.

Q. And that shows the revenue passengers carried for each year from 1924 to 1928,—the passenger revenue during that period of time? A. It does.

Q. And likewise for the years 1944 to 1948? A. Yes, sir.

Mr. Jardine: We offer Exhibit No. 12 in evidence.

Examiner Bernhard: Any objection?

Mr. Loble: No objection.

230 Mr. Booth: No objection.

Examiner Bernhard: It may be received as Exhibit No. 12.

(Applicant's Exhibit No. 12, Witness Atwood, heretofore marked for identification, was received in evidence.)

Q. (Mr. Jardine, continuing:) Mr. Atwood, with reference to the years shown, it shows from 1924 to 1928 the highest passenger traffic carried for any one year was 6425 passengers, with a revenue of \$3914.00; in 1948, the lowest year, 753 passengers with a revenue of \$259.00? A. That is right.

Q. And from 1944 to 1948 there never has been a year in which the railroad has carried as many as fifteen hundred passengers, or received a revenue in excess of \$560.00 for passengers carried? A. Yes, sir.

Q. The only railroad that the Montana Western connects with, Mr. Atwood, is the Great Northern Railway Company, is it not? A. That is right.

Q. You have no connections of any nature or description with any transportation company, do you, other than the Great Northern? A. No, sir.

Q. Mr. Atwood, at my request did you prepare a statement showing the average number of employees on the Montana Western Railway Company for the years 1943,—or, 1933 to 1948, inclusive? A. I did.

Q. Also showing the total man-hours of employees during those years? A. I did.

Q. And the total compensation to employees? A. I did.

Q. And the average compensation per man? A. Right.

Q. During each of those years? A. Yes, sir.

Mr. Jardine: We ask that be marked as Exhibit No. 13.

(The document above referred to was marked Applicant's Exhibit 13, for identification, Witness Atwood.)

Q. (Mr. Jardine, continuing:) Mr. Atwood, does this record show the average number of employees each year for the years 1933 to 1948? A. It does.

Q. And from 1933 to 1948 the average number of employees was each year from thirteen,—or from a minimum, I think of probably 10.6 in 1945, to about 16 in 1934? A. That is right.

Q. And 1935. The compensation paid all employees in 1933 was \$12,593.74; is that correct? A. That is right.

232 Q. The average compensation paid was 60.6 cents per hour? A. That is right.

Q. That is in 1933? A. Yes, sir.

Q. At the present time,—I will withdraw that. In 1933 there were thirteen employees on an average, and in 1948 there were 15.3 employees on an average? A. Yes, sir.

Q. The total compensation paid to employees in 1948 was \$40,174.00 even? A. Right.

Q. Approximately \$29,000,—or \$28,500, over and above the compensation paid to employees in 1933? A. Yes, sir.

Q. And the rate paid to the employees now, the average rate is \$1.23-175? A. That is right.

Mr. Jardine: We offer this in evidence.

Examiner Bernhard: It will be received as Exhibit No. 13,—I take it there is no objection?

Mr. Loble: No objection.

Mr. Booth: No objection.

Examiner Bernhard: It will be received as Exhibit No. 13.

(Applicant's Exhibit No. 13, Witness Atwood, heretofore marked for identification, was received in evidence.)

233 Q. (Mr. Jardine, continuing:) Mr. Atwood, do you have a list of the employees of the company at the present time, and the compensation paid to them? A. I have.

Q. Will you tell us what your list will show? A. The superintendent is paid \$310.75 a month,—

Q. Don't go so fast. A. All right.

Examiner Bernhard: How much a month? A. \$310.75. The accountant and agent,—

Examiner Bernhard: What is that?

The Witness: The accountant and agent. A. \$300.50 a month.

Examiner Bernhard: Is that the same person? A. No,—well, the accountant and agent are the same person.

Examiner Bernhard: Accountant and what?

The Witness: Accountant and agent. One man works as accountant and agent, both.

Examiner Bernhard: Yes. A. (Continuing:) Service man, \$240.00 per month; engineer, \$12.97 per day,—eight hours, or a hundred miles, rather; conductor, \$12.21 per day; fireman, \$11.32 per day; brakeman, \$10.73 per day; section foreman, \$1.38 per hour; section laborers, \$1.07 per hour; and student brakemen get forty-six cents an hour.

234 Q. (Mr. Jardine, continuing:) Now, Mr. Atwood, outside of the employees named by you, and since you have been General Manager of the Montana Western Railway Company, has there ever been any money paid to any officers or employees other than those enumerated? A. No.

Q. There has never been any money paid, for instance, to anybody as president, or any of the executive officers of the Montana Western Railway Company? A. No; none of them.

Q. And from your experience in running the Montana Western Railway Company since 1928, is it possible to reduce the number of employees and still operate that railroad? A. It can't be done, so far as I can see.

Q. Have you endeavored to operate that railroad at the lowest possible cost and still handle freight and passenger traffic? A. I have.

Q. And have you at any time spent any money that you didn't think was absolutely necessary in order to render service? A. No.

Q. Will you tell us in general what the engineer of the railroad does with reference to his work over and above actually running



the locomotive? A. He does the I. C. C. inspections monthly; he does the light, or running repair, work, that is, anything  
 235 that isn't too heavy for us to handle with the machinery we have, and,—those are the two things he has to do. After all, that covers the whole field.

Examiner Bernhard: You are speaking now of the repair work to the equipment?

The Witness: That is right.

Q. (Mr. Jardine, continuing:) That is repairs to the engine? A. Light repair work.

Examiner Bernhard: Light running repair work?

The Witness: Yes; light running repair work.

Q. (Mr. Jardine, continuing:) And in connection with such repair work that can't be performed here you have to send the engines out for repairs, do you not? A. To Great Falls, to the Great Northern.

Q. The engineer at present, do you consider him a well-qualified and capable man on his job? A. I consider him excellent.

Q. Do you consider him better than ordinary, in that he does this extra service and is able to do it? A. Better than a good many I have met. He is able to do more. Most engineers don't know anything about the I. C. C. regulations, and don't know how to make an inspection, and a lot of them can't make a running repair, a light repair.

236 Q. And is this present engineer able to do that? A. He is.

Q. Not only able, but does do it? A. That is right.

Q. Now the community of Valier is served by a gas pipeline, is it not? Don't they use gas at Valier for heating? A. They do.

Q. And can you tell us in general what effect that has had in connection with the incoming freight,—coal? A. It has decreased coal to very little tonnage a year.

Q. And your incoming traffic, which amounts for the last five years to something less than,—in any event, less than ten per cent, and probably around five or six per cent,—your incoming traffic consists mostly of what? A. Well, there is lumber, a small amount of lumber, a small amount of cement, and about a car of petroleum products a month. Now and then we get a car of salt, and a car of stock food.

Examiner Bernhard: I can't hear you. Will you speak a little louder? The last was salt?

The Witness: Salt; stock food.

Q. (Mr. Jardine, continuing:) And you also have your local freight, your L. C. L. freight? A. Oh, yes.

Q. And the same with your outgoing traffic, you have your  
 237 L. C. L. freight? A. Yes.

Q. And with reference to petroleum products brought in, you say you bring in about a car a month. How does that compare with the petroleum products that are used in this community? Do you bring in most of it, or a very small part of it? A. A very, very small part of it.

Q. And with reference to the merchandise that is brought in to stores in Valier, do you bring in most of it, or a small part of it? A. A small part of it.

Q. Can you tell us the reason for that? A. The wholesale houses, all except one, in Great Falls have their own trucks and everything that comes out of Great Falls, that does come out of Great Falls, comes by private trucks except for one wholesale house.

Q. And that wholesale house is Heisey? A. That is right.

Q. The balance, or the five or six other wholesale companies that deliver in this territory have their own trucks? A. That is right.

Q. That come into Valier? A. Yes, sir.

Q. And, of course, the other towns around here? A. Yes.

238 Q. They don't use either your railway or the Great Northern Railway? A. No, sir.

Q. Years ago that traffic used to move over the Montana Western? A. Yes.

Q. But for quite a number of years it hasn't done so? A. No.

Q. Now, with reference, I will withdraw that. You have testified that during the last five years about, approximately ninety-one per cent of your traffic has been grain moving out of Valier, and you have prepared a statement showing the rates applying to grain moving out of Valier, at my request, have you not, Mr. Atwood? A. Yes.

Mr. Jardine: I ask to have this document marked as Exhibit No. 14.

(The document referred to was marked Applicant's Exhibit 14, Witness Atwood, for purpose of identification.)

Q. Is that correct, Mr. Atwood? A. That is right.

Q. This was prepared from your books and records, was it not? A. It was.

239 Q. And represents the deductions made from the figures shown on your books and records, or they not, I mean your deductions, that is the cost per, A. Yes; it represents that.

Mr. Jardine: We will offer this in evidence, and have the exhibit explained by the witness.

Mr. Loble: No objection.

Mr. Booth: No objection.

Examiner Bernhard: It may be received as Exhibit No. 14.

(Applicant's Exhibit No. 14, Witness Atwood, heretofore marked for identification, was received in evidence.)

Q. (Mr. Jardine, continuing:) Will you explain the rates, Mr. Atwood, with reference to this exhibit, and anything of your personal knowledge, the rates with reference to grain moving out of Valier, and also any grain originating at Conrad, insofar as it applies,—has any reference to these rates as shown by your Exhibit No. 14? How the rate is arrived at to begin with, and how the proportion is made, and what you,— A. Well, the grain moves out of Valier on a proportional rate, and moves over the Great Northern on a proportional rate. The rate out of Valier is eight and one-half cents. This doesn't take in the four per cent increase; that was allowed on interstate traffic, but not on intrastate traffic.

Q. Who allowed that four per cent? A. The Interstate Commerce Commission.

Q. By an order? A. By an order.

240 Q. Do you know the number of it? A. No; I think Mr. Westimore would know more about that.

Q. Well, if you don't know the number, you at least know there is a four percent increase? A. Yes; it is eight and one-half cents without the four per cent to Conrad. It is fifty-eight cents then from Conrad to the eastern terminals. That makes sixty-six and one-half cents from Valier, and then adding the four per cent to that,—

Examiner Bernhard: What do you take the four per cent of?

The Witness: Of sixty-six and a half, which is 2.66 cents. That gives you 69.16 cents total rate, or to put it in bushels, for wheat it would be 41.496 cents; and for barley, 33.196 cents; and oats, 22.131 cents.

Examiner Bernhard: That is the entire rate?

The Witness: That is the entire rate, per bushel.

Mr. Lobel: May I ask a question? That four per cent, which is .0266, does not go to you, it goes to the Great Northern? A. Part of it goes to us and part of it to the Great Northern. Four per cent of .085 cents goes to us, and four per cent of fifty-eight cents goes to the Great Northern.

241 Mr. Lobel: Oh, you get a proportion of the increase on your .085? A. That is right.

Mr. Lobel: Thank you. A. (Continuing:) Then on the grain rates to Spokane and the Pacific Coast,—

Examiner Bernhard: Before you leave this,— A. I am going to have to read this.

Examiner Bernhard: Before you leave this, can you explain where these destinations are?

The Witness: What was that?

Examiner Bernhard: Can you explain where these destinations are?

The Witness: The eastern terminals are St. Paul, Minneapolis, Duluth, Superior, Fargo, Grand Forks, and a larger number of smaller towns and cities in Minnesota and North Dakota.

Examiner Bernhard: The rate varies some, I take it, or not?

The Witness: No; it is the same rate to all those points.

Examiner Bernhard: The same rate?

The Witness: Yes.

Examiner Bernhard: Oh, yes; you have it here. I didn't see it.

Q. (Mr. Jardine, continuing:) Mr. Atwood, you have shown that where grain originates, for instance, in Valier on the Montana Western, the rates to the points just referred to over the  
242 Great Northern on grain originating at Valier, is fifty-eight cents a hundred; is that right? A. That is right.

Q. If that grain, instead of originating at Valier, is hauled out of Conrad, that is, originates at Conrad and not on the Montana Western Railway, the rate to the points that you have indicated, that the Great Northern collects, is sixty and one-half cents, is it not? A. That is right.

Q. Of course you have nothing whatever to do with that? A. No.

Q. That grain I am referring to last is grain originating at Conrad only? A. Conrad proper.

Q. But if that same grain had originated at Valier the Great Northern's collection on a hundredweight of that grain is fifty-eight cents, instead of sixty and a half cents which it would get if it originated at Conrad; is that correct? A. That is right, plus four per cent.

Q. And if it originates at Valier your proportional rate of the total rate on grain originating in Valier is eight and one-half cents, plus four per cent? A. That is right.

Examiner Bernhard: May I ask a question here?

Mr. Jardine: Yes, surely.

Examiner Bernhard: Do other railroads participate in  
243 the movement of this grain, or does the Great Northern haul it to all those destinations?

The Witness: They haul it to all of the destinations that are shown there.

Examiner Bernhard: I see. Do you have some grain moving to destinations not on the Great Northern, in any appreciable amount?

The Witness: No, I don't think so. I will have to leave that to Mr. Wilshire.

Examiner Bernhard: Just off the record, Mr. Reporter.

(Discussion off the record.)



Examiner Bernhard: Back on the record.

Q. (Mr. Jardine, continuing:) Mr. Atwood, with reference to grain that originates in Valier, and likewise grain originating at Conrad, will you tell us what the rates are on that? A. Well, I have just told you the rates for the eastern terminals.

Q. That is right. A. What else do you want?

Q. Well, the western terminals. A. The western terminals? O. K.

Q. Where are the western terminals? A. Oh, there is the Pacific Coast and Spokane,—Seattle, Tacoma, Portland, some goes down in California.

Q. And what are the rates to the Pacific Coast points? 244 A. Eight and one-half cents, and then from Conrad it is fifty-four cents, and adding your four per cent, makes a total of sixty-five cents to the Pacific Coast.

Q. And does any of this show your rates with reference to the Federal tax? A. The Federal tax, which is a three per cent tax, isn't included in these rates; no.

Q. Now, likewise, if that grain originates in Conrad instead of in Valier, and is shipped to Pacific Coast points out of Conrad, there is a two and a half cents a hundred higher rate on that grain, isn't there? A. To Coast points there is a differential there of two cents.

Q. Two cents instead of two and a half cents? A. Yes; and then add your four per cent.

Examiner Bernhard: I didn't get the question completely. Will you read the question, Mr. Reporter.

(Preceding two questions and answers read by the Reporter.)

Q. (Mr. Jardine, continuing:) I am referring to the last paragraph in your Exhibit No. 14, Mr. Atwood, it seems to me you said it is two and a half cents higher if it originates at Conrad to Pacific Coast points, and one and a half cents higher if it goes to Spokane; am I wrong on that? A. That would be for your eastern terminals.

Examiner Bernhard: Suppose we take a recess at this 245 point for fifteen minutes?

(A short recess was taken.)

Examiner Bernhard: We will resume the hearing.

Q. (Mr. Jardine, continuing:) Mr. Atwood, with reference to the grain rate, can you tell how the tariff is fixed on that,—how they originally determine, for instance, your eight and one-half cents per hundred? A. To start with, the railroad company makes up a tariff of rates they think they should have and file it with the Interstate Commerce Commission and with the Montana Railroad Commissioners.

Examiner Bernhard: You are speaking of the Montana Western Railway Company making-up a tariff fixing the rates that it thinks it should have,—is that what you said?

The Witness: That is right; yes.

Q. (Mr. Jardine, continuing:) And has that rate been increased in years past up until it has reached eight and one-half cents now per hundred on wheat moving out of Valier? A. Yes.

Q. And are those rates, or tariffs, filed, as you say, with the Interstate Commerce Commission and the Montana Railroad Commission, and is it necessary that they be approved before you put them into effect? A. That is right.

Q. Is there any practical limit to the amount of the rate  
246 that you file, for instance, in this case it is eight and a half cents,—you could file a higher tariff, if you wanted, could you not? A. Yes; we could file higher. If it was too high, it would be rejected by the Commission down there if they thought it was beyond reason, and we go about as high as the traffic will permit.

Q. In other words, you file a rate that you figure is as high as you can get for the services offered; is that right? A. That is right.

Q. And do you have a practical limitation on that rate? A. Well, we can't make it so high as to force all the business into trucking.

Q. And if you made the rate higher than the present rate, do you figure the result of that would be that,—or would have been that it would have forced the business into trucks? A. I do.

Examiner Bernhard: May I have the witness for just a moment on that?

Mr. Jardine: Yes, surely.

Examiner Bernhard: You say the railroad company files a tariff, and files it with the Interstate Commerce Commission and with the State Commission. Speaking now of the rate that you file with the Interstate Commerce Commission, when you file that rate,—that  
247 tariff containing that rate, the Interstate Commerce Commission does not then and there pass upon the reasonableness of it, does it? A. No, it doesn't.

Examiner Bernhard: Or it doesn't approve whether it is too high or too low at that point? A. No; if it is of enough importance they will have a hearing on it.

Examiner Bernhard: Well, that is on the complaint of some interested shipper?

The Witness: If they have no complaint, then they will take it under consideration. If they approve the rate the tariff goes into effect on the effective date shown on the tariff.

Examiner Bernhard: If no shipper protests the rate?

The Witness: Yes.

Examiner Bernhard: The Interstate Commerce Commission does not make any complaint against the rate, does it, except as to its being in proper form?

The Witness: I don't suppose they do. I don't know. We have never had one come up yet.

Examiner Bernhard: I just wanted to clear that up.

The Witness: Yes.

Q. (Mr. Jardine, continuing:) At any rate, the rate that you fixed, eight and one-half cents, is as much as you figured the traffic would bear? A. That is right.

248 Q. And in fixing a higher rate you figured you would run into competition with trucks which would result in a lesser return to the railroad? A. That is right.

Q. That is, a lesser gross return out of the tonnage handled. A. Yes.

Q. You don't, or do you handle all the traffic, all the grain traffic that originates in this territory, do you handle it all over the Montana Western? A. Not all of it; no.

Q. Do you know here the grain is hauled from the territory served by the Montana Western,—hailed other than by the Montana Western? A. It is hauled to Shelby, Cutbank, Pendroy, Agawam.

Q. The grain that is raised, say, ten or twelve miles east of Valier, where is that hauled? A. Conrad and Shelby.

Q. And the grain that is hauled in the Dupuyer territory, where is that hauled? A. Pendroy.

Q. Is there any grain hauled out in the immediate vicinity of Valier itself other than to stations on the Montana Western? A. I don't know of any in the immediate vicinity of Valier. There has been some in the immediate vicinity of Williams hauled to  
249 Shelby.

Q. The balance of your trade handled over the Montana Western, which accounts for nine per cent of your total traffic, ingoing and outgoing, is handled,—what rates are applied to them? How are the rates fixed on that, and what are they called? A. You mean the rates from here to Conrad?

Q. I mean, if you will explain in general the ingoing and outgoing traffic, and how they fix the rates? A. Our rates fixed are combination rates.

Q. That is, the rates the Montana Western fix; is that right? A. That is, for shipments of grain that go beyond Conrad, a combination rate, the rate on the Great Northern plus the rate on the Montana Western.

Q. And in your traffic and grain coming in, not grain, but on freight coming in and going out, other than combination rates are there other rates applicable? A. Not to the grain; no.

Q. I mean other than grain. A. Yes; joint rates, what they call joint rates, or they are sometimes called through rates. The rate applies from points beyond Conrad to Valier clear through. It is a one-factor rate, as they are called.

Q. A one-what? A. A one-factor rate.

250 Q. How are they fixed? A. They are usually fixed by either the two roads getting together, or by an agent who represents all the roads. They file the tariffs.

Q. They file the tariff with the Interstate Commerce Commission and with the Montana Railroad Commission? A. The roads agree to the charge that is going to be made before it is filed.

Q. And that wouldn't apply to over nine per cent at the most of the traffic handled over the Montana Western Railway? A. No.

Q. And,—

Examiner Bernhard: And when you come to divide the through rate what do you call the process that you use? A. Divisions.

Examiner Bernhard: Divisions? So the word "divisions" of rates as between railroads means,—is used only with reference to joint through rates?

The Witness: That is right.

Q. (Mr. Jardine, continuing) Now, Mr. Atwood, with the exception of the town, increase in population in the town of Valier in the last few years, would you say there is any increase in population in the community served by the Montana Western Railway Company? A. No, I don't believe so.

251 Q. And with reference to increase in tonnage hauled over the Montana Western, is there any way you know of to increase the amount of tonnage that this railroad hauls? Is there any practical steps you could take that would increase the tonnage? A. Not at the present time.

Q. Is there any likelihood, so far as you can see, of any increase in tonnage in the future over what has been handled in the past? A. No.

Q. Would you say the tonnage would continue about the same as it has been in the past five years, or so, for some period in the future? A. So far as I could see, it would.

Q. And do you see any reasonable opportunity of increasing the rates that you charge over the Montana Western Railway? A. I don't see how they could be increased and still hold the traffic?

Q. What was that? A. I don't see how they could be increased and still hold our traffic.

Q. Or any increase in the division of rates? A. You mean on inbound shipments?

252 Q. That is right. A. That could be. You could get an increase there, but inbound shipments are so few and far between it wouldn't make much difference.



Q. There might be a possibility of a slight increase? A. That is right.

Q. Not enough to materially affect the gross income of the railroad? A. That is right.

Examiner Bernhard: Approximately, could you estimate to what extent revenues might be increased through the increase of divisions of joint through rates?

The Witness: I would have to study that, sir.

Mr. Loble: What was the answer?

The Witness: I would have to study that.

Examiner Bernhard: Do you know what your gross revenues from joint through rates amount to?

The Witness: We didn't separate them.

Mr. Jardine: I think that is all with this witness at the present

Examiner Bernhard: Was he going to clear up something in the foot note to this Exhibit 14?

Mr. Jardine: Well, if you,—

The Witness: No, it is O. K.

Examiner Bernhard: Did you offer Exhibit No. 14? I am not sure whether you offered it or not?

253 Mr. Jardine: I thought I did.

Examiner Bernhard: At any rate we will admit it in evidence.

Mr. Jardine: Was there anything with reference to that exhibit you wanted cleared up?

Examiner Bernhard: I take it there is no objection to the receiving of the exhibit in evidence?

Mr. Loble: No objection.

Mr. Booth: No objection.

Examiner Bernhard: It is received as Exhibit No. 14. Counsel will probably want to clear up some things.

Mr. Loble: Mr. Booth will cross examine first.

#### Cross Examination

Q. (By Mr. Booth:) Mr. Atwood, as I understand you have been in your present capacity with the road since 1928? A. That is right.

Q. And since that time you have been familiar with the maintenance and supervision of the operations? A. Yes, sir.

Q. Your reports as shown in your exhibit 11 show the operating revenues for each year from 1933 to 1948, inclusive; it likewise shows the total operating cost, and a note is contained in that exhibit 11 stating that the information contained is taken from the annual reports to the Interstate Commerce Commission? A.

254 Yes, sir.

Q. Will you tell me what items you took out of the report to the Interstate Commerce Commission to make up your total cost of operation? A. Yes. You mean how I got that figure?

Q. Yes. A. I took it just as it was shown in the reports.

Examiner Bernhard: He wants you to give a break-down of it.

Q. (Mr. Booth, continuing:) What break-down do you make of that; yes? A. Let me see,—have you got the reports here?

Mr. Jardine: They are over here. Which one do you want?

Q. (Mr. Booth, continuing:) Let's refer to the 1948 report. A. That will be all right.

Q. 1948? A. Yes.

Examiner Bernhard: You want the items and the figures?

Mr. Booth: I want the items and the figures. A. Take this (indicating) and add it to that (indicating) and you have got it.

Examiner Bernhard: He wants you to develop it for the record. You will have to read it for the record. A. There is the whole thing (indicating).

Q. That is the operating revenue? A. That is the operating revenue right there.

Q. In Item No. 1902? A. Yes.

Q. And your deficit? A. And your deficit you look down through here (indicating). Here is your expenses.

Examiner Bernhard: We are not making much headway here, because you are are not getting it in the record. A. Here you are,—

Mr. Jardine: Just a minute. Will you listen to the Commissioner a minute? A. All right.

Examiner Bernhard: For this discussion to be of any value, we have to see that the Reporter gets it on the record.

The Witness: Oh, yes.

Examiner Bernhard: Now, as I understand it; counsel wants you to analyze the cost of operations for the year 1948; is that right?

Mr. Booth: That is correct, as shown on Exhibit No. 11.

Examiner Bernhard: You will have to read the item and right after it give the amount, so that the Reporter will get it. Go slowly now.

The Witness: For this particular year?

Examiner Bernhard: 1948; yes.

Q. (Mr. Booth, continuing:) 1948. A. Well, let's see,—  
256 revenues come first,—

Examiner Bernhard: You have got the revenues. A. (Continuing:) in Schedule 1902; then you take schedule 2001, railway operating expenses.

Q. (Mr. Booth, continuing:) Give the amount of that, Mr. Atwood. A. \$68,635.00. Then you go into Schedule 1801,—take each one of these as you go down here?

Q. Yes; that is what it will be necessary to do. A. Railway tax accruals, \$6,241.00; hire of freight cars, \$440.00. Now, we have an income which is a credit to this thing: Miscellaneous rent incomes, \$417 00; miscellaneous income, \$47.00. Miscellaneous,—now this is the other expenses,—

Q. Yes. A. Miscellaneous tax accruals, \$12.00; fixed charges, interest in default is \$9,900.00.

Examiner Bernhard: Back on the record, Mr. Reporter.  
(Discussion off the record.)

Examiner Bernhard: Back on the record, Mr. Reporter.

Q. (Mr. Booth, continuing:) That then leaves a total deficit, Mr. Atwood; according to the 1948 report of \$37,019.00? A. That is right.

Q. Now, in showing that figure of deficit that includes interest, taxes and all costs chargeable to the railroad? A. That is  
257 right.

Q. And the variation between the figures shown in your Exhibit No. 11, and the figures shown in your Exhibit No. 9, which is Exhibit "D" to the Questionnaire, will then represent the costs other than operating costs? A. What is that?

Mr. Booth: Will you read him the question, Mr. Reporter?

(Pending question read by the Reporter.) A. I don't know,—I don't follow you.

Q. (Mr. Booth, continuing:) You have the wrong exhibit in front of you? A. Have I? This one here,—oh, yes, I see,—right down here, 1948.

Examiner Bernhard: A little louder, Mr. Atwood. A. Do you see? It is the same thing.

Examiner Bernhard: He has this all set out in Exhibit "B" to the Return to the Questionnaire. It can be analyzed there. What you really want him to do is you want him to reconcile this figure of \$37,019?

Mr. Booth: My question was the operating income. A. This income?

Q. (Mr. Booth, continuing:) On the first schedule. A. The revenues are here (indicating).

Mr. Booth: He answered the question before. I think I will withdraw the question.

258 Q. (Mr. Booth, continuing:) Mr. Atwood, in your testimony on the construction and maintenance of this line, you stated that most of the work in the past few years has been straight maintenance work? A. Correct.

Q. What do you believe is necessary work other than maintenance at the present time, in dollars and cents? A. To keep the road so so you can get over it?

Q. Yes; in operating condition. A. There is only one item I know about, is \$150.00 for the culvert.

Q. You also mentioned the bridge? A. Yes, the bridge, but that five thousand dollars I would consider as maintenance.

Q. That would be maintenance? A. Yes, sir.

Q. What would you anticipate your maintenance would be in 1949? A. This year?

Q. Yes. A. May I see this report? About Twenty thousand dollars.

Q. That is about eleven thousand dollars less than it was in 1948?

A. It was twenty-six thousand dollars in 1948, maintenance of way.

259 Q. Pardon, me,—twenty-six thousand dollars. Would future operations generally be on a basis of about twenty thousand dollars a year for maintenance? A. They would not.

Q. What would be the result in the future? A. Run about, with the present scale of wages, and the present cost of material,—it would run about twenty-five thousand dollars.

Q. And that is about what it has been running in the past, or possibly a little less? A. Yes.

Q. Mr. Atwood, you mentioned a trackage right, or agreement, with the Great Northern on three and two-tenths miles out of Conrad. What is that trackage agreement? What are the terms of it? A. That gives us the right to run over their tracks. Originally, there was a charge made per car.

Q. What was that charge? A. I think it was twenty-five cents, if I remember right.

Q. Has that now been eliminated? A. I haven't seen a bill on it for a long time.

Q. Do you know whether or not that railroad company has agreed to waive that charge? A. I don't know. If they have, I didn't know it.

260 Q. How was that twenty-five cents per car computed? Was it on inbound or outbound car, or both? A. Yes, sir.

Q. What charge was made on the road equipment like engines and your way cars? A. The same thing.

Q. Twenty-five cents for the engine? A. Yes, sir.

Q. If you were to continue operation, and with the Great Northern Railway Company refusing to advance any further money, do you have any way of knowing whether or not they would bill you for that twenty-five cents per car on future operations? A. I don't know.

Q. How long has it been since you received a bill on that? A. I don't remember that. It has been so long I have forgotten.

Q. Any way two or three years? A. Oh, yes; more than that.



Q. In your Questionnaire, I believe it is on page eight,—page six, the last part of your answer to Item 7, you make the statement that it is necessary for trainmen and enginemen to pass examinations on the rules of the Great Northern Railway Company, and have sufficient experience to qualify as Great Northern employees? A. That is right.

261 Q. Will you explain that statement, please? A. Engineer, brakeman, conductor and fireman have to pass examinations on their book of rules. Here is the book of rules here (indicating). They have to learn that part, and then they have to have the required amount of experience before they will be examined.

Q. Have you given any consideration to eliminating the operation over that three and two-tenths miles of track of the Great Northern so as to be able to get away from this requirement on the qualifications of trainmen? A. I have.

Q. What consideration have you give it? What features of it? A. You would have to construct a wye, and buy the right of way for it.

Q. And then have the Great Northern deliver you the cars at the wye instead of at Conrad? A. And they would probably charge a switching charge for doing that.

Mr. Jardine: Will you talk a little louder, please, Mr. Atwood?

Q. (Mr. Booth, continuing:) If you had a wye there, would it be possible for you to save any on your number of trainmen employed on your train from that wye into Valier? A. Part of the 262 time.

Q. When the traffic was light, I assume? A. Yes.

Q. Have you given any consideration to the possibility of cutting down the quality of service, or eliminating passenger service and cutting down to two or three days a week? A. Yes.

Q. What study or consideration have you given to that? A. I have tried to figure out how I could hire men part time at the present time. You can't do it.

Q. You mean all of your train men, and so forth, or what type of men? A. What do you mean?

Q. You say hire a man? You mean your trainmen? A. That is right; that is right.

Q. Why can't you do it at the present time? A. You can't get men to work part time.

Q. Have you made any study or effort to contact the Great Northern to see whether or not it would be possible to make any deal with that railroad to have employees of theirs loaned to your road for one- or two-day operation? A. No, I haven't, but every time a man on our line takes a vacation or something like that, I get a Great Northern man to replace him, and sometime I have to wait a couple of weeks before I can get the man to replace him.

Q. Do you believe it would be possible to figure out any  
263 development whereby you might be able to operate a train  
two days a week with employees borrowed from the Great  
Northern at Conrad? A. Sometimes you could, and sometimes you  
couldn't. It would depend on how busy they were.

Q. What I am trying to do, Mr. Atwood, is to find out whether  
or not there is any way that the operating expenses of this road  
can be reduced so as to still maintain freight service. A. I under-  
stand.

Q. Now, will you tell me, generally, what conclusions you have  
arrived at and what study you have made as to the possibility of  
continuing service on a curtailed basis? A. That is what I have  
arrived at from the study I made. I couldn't find men to run the  
proposition and still turn around up here. The Great Northern  
may have men but they can use them on another run some place  
during the days they are not running up here, but we have only  
one run.

Q. You mentioned you can't do it and turn around up here. Is  
there any way you could operate the line from Conrad or from a  
Wye constructed at your junction rather than from here, so as to  
leave the men available at that end? A. Then I don't believe  
you could employ these men on the Great Northern during the  
period they are off. At least we did switching down there for a  
while and the Great Northern paid for every hour our crew did  
the switching for their crew. It cut them out of the switching.

264 Q. Cut who out? A. The Great Northern's local crew.

Q. You did that for the Great Northern? A. We did.

Q. How did you handle that interchange of work? A. We did  
it while we were down at Conrad, before we came back. We were  
there for some time to make up our train and come back up here.

Q. How was your company paid for that service? A. They were  
paid by the hour.

Q. Was the Montana Western paid, or were your individual<sup>60</sup>  
employees paid? A. No; the Montana Western was paid.

Q. Do you think any such agreement could be arrived at with  
the Great Northern whereby they might operate the train from  
the junction into Vrelier and back out? A. I doubt it. They have  
no men at Conrad to lay over,—trainmen.

Q. If you were to construct a wye, and providing you didn't  
have to take into account switching charges, is there any fixed  
amount that you would say you could save by such an operation,  
in employees and hours of service?

Examiner Bernhard: We can't hear you back here. I realize  
you have to speak in two directions. Will you put your  
265 chair back here? A. We would have to go through the  
records to determine that. That would have to be figured.

out. You can't make a baldheaded guess on something like that, and know where you are at.

Q. Don't you believe, Mr. Atwood, it would be to the advantage of continuing service to make such a study? A. It could be done.

Q. And if such a study were made and it were possible to continue the service and furnish the people here the service which they need, don't you think it would be worth while from the standpoint of both the community and the Montana Western Railway? A. Do you think you can save twenty or thirty thousand dollars a year that way?

Q. Well, I don't know. I am asking if such a study could be made? A. I doubt very much if you could save that much.

Q. How much do you believe you could save? A. Maybe save around ten or twelve thousand dollars, if it could be done. That is an estimate; that is just a guess. I have no foundation.

Examiner Bernhard: What is that estimate of a saving of ten or twelve thousand dollars based upon? I would like to get that clear. What facts did you base that on?

266 Mr. Booth: It was based on the qualification of the construction of a wye at the junction, and the curfailing of service between the junction and Valier; in other words, eliminating the operation between Conrad and the junction, so far as the Montana Western was concerned, and curtailing service from the junction into Valier.

Examiner Bernhard: To what?

Mr. Booth: I stated "two or three times a week."

Mr. Loble: Freight?

Mr. Booth: Freight operation, yes.

A. May I explain?

Examiner Bernhard: Yes; you may explain.

A. You can't get by two or three times a week, the crops we have here in the fall, so you haven't got a complete saving. You can't divide the expenses by two,—I will state that.

Q. (Mr. Booth, continuing:) Your estimate is ten or twelve thousand dollars? A. That is what I guessed at.

Q. Per year? A. Yes.

Q. Against your present operating expenses of \$68,000.00? A. That is right.

Examiner Bernhard: That would be based upon the assumption that you could get competent men to operate the train on a part time basis?

267 The Witness: That is right.

Examiner Bernhard: Which is probable, or not?

The Witness: Very improbable, at the present time.

Q. (Mr. Booth, continuing:) Do you believe it would be at all possible to arrive at any agreement with the Great Northern



whereby the Great Northern's employees would run the operation from the junction up to Valier, say, as a side line on their present local service, or on any other basis? A. I don't know.

Q. Do you know whether or not such a proposition has been presented to the Great Northern? A. Not that I know of.

Q. Before abandoning the line, don't you believe that such an effort should be made in order to try and save the freight service for the area? A. It could be, but I don't think you are going to get very far. They might as well take it,—am I speaking out of turn here?

Examiner Bernhard: Go ahead.

A. They might as well take the line over as to start that, and they refused to do that.

Q. (Mr. Booth, continuing:) You think their refusal to take over the mortgage would indicate that they would refuse to enter into any kind of an agreement to cooperate in the operation? A. I think so.

Q. Even though all of the traffic originating on the Montana Western may be eventually diverted to their line for longer hauls? A. That is right.

Examiner Bernhard: Your question uses the term, "take over the mortgage," do you mean that?

Mr. Booth: Take over the property for the mortgage,—excuse me.

Q. (Mr. Booth, continuing:) What would be the proposition on the effective wages if you eliminated the passenger service? A. That wouldn't make a bit of difference.

Q. If you eliminated the passenger service could you make any savings in the cost of operation? A. No.

Q. Why? A. Because the passenger service doesn't amount to enough that it makes any difference.

Q. In other words, your present passenger service is not operated for the convenience of the passengers actually at the present time; is that right? A. It is operated for the convenience of the passengers. That is just what it is, but we have to have some place for the crew to ride, and you might just as well have a place for the passengers to ride also. There is no additional expense there. The only expense you have is the purchase of tickets, and the labor of the agent, and that doesn't amount to anything.

Q. (Mr. Booth, continuing:) Mr. Atwood, on the matter of rates, your Exhibit No. 14 shows that there is a difference charged by the Great Northern for a haul from Conrad of two and a half cents more than a haul picked up from the Montana Western line; in other words, if they haul from Conrad they charge two and a half



cents more than they charge for the same haul if it comes off of your line? A. That is right.

Q. Now, you stated that your rate is a combination rate. By that you mean that the rate charged on a shipment of grain from here to Minneapolis is the local rate on your road, plus the rate fixed by the Great Northern of fifty-eight cents? A. That is right. The only thing is that eight and a half cents is a proportional rate; not a local rate.

Q. What is your local rate? A. Nine and one-half cents, plus all the increases that went into effect here the last two years.

Q. Nine and a half? A. Yes. This is a proportional rate.

Q. That two and a half cents the Great Northern has  
270 there includes the increases granted since 1946, is that correct? A. That is right.

Q. However, your eighty-five cents does not include the increases? A. No.

Q. Or your ninety-five cents? A. Yes, our eight and one-half does.

Q. Your eight and a half does, but your ninety-five doesn't? A. The nine and a half wouldn't.

Q. And those increases on agricultural commodities, if I am not mistaken, amount to thirty-nine per cent since 1946,—that is the Ex-parte 162, 166 and 168? A. That is right.

Mr. Booth: A correction for the record: That does not include the 168 increase.

Examiner Bernhard: I didn't get that?

Mr. Booth: I say that thirty-nine per cent that I mentioned does not include the four per cent increase in 168. A. That is on intrastate traffic.

Q. (Mr. Booth, continuing:) I was just going to ask you, Mr. Atwood, whether or not that four per cent increase was applicable on Montana Western intrastate traffic? A. No, it is not.

Q. The rate was approved by the Interstate Commerce  
271 Commission, but denied by the Montana Commission? A.  
Yes.

Examiner Bernhard: Well, Mr. Booth, may I clear up something there?

Mr. Booth: Yes, certainly.

Examiner Bernhard: The eight and a half cent rate applicable on grain that is shipped beyond Conrad would get its proportion of the four per cent? A. That is right; if it went out of the state.

Examiner Bernhard: Yes. Now, the nine and one-half cent rate would be a local rate from Valier, say, to Conrad?

The Witness: That is right.

Examiner Bernhard: Not moving beyond Conrad?

The Witness: No.

Examiner Bernhard: And what would be added to the nine and one-half cent rate?

The Witness: The increases from Ex-parte 162, 166 and 168 would be added to that.

Examiner Bernhard: If it didn't move beyond Conrad?

The Witness: No; not 168,—162 and 166.

Examiner Bernhard: 162 and 166,—what do they total?

Mr. Booth: Thirty-nine per cent, I believe, Mr. Examiner.

Examiner Bernhard: What?

Mr. Booth: Thirty-nine per cent, on agricultural commodities. 162 is fifteen per cent on agriculture, and twenty, generally; 272 and 166 was twenty, which makes it thirty-nine and forty-four, if I am correct in my memory.

Examiner Bernhard: May I ask another question along that line? I would like to clear up some of these things as we go along.

Mr. Booth: Certainly.

Examiner Bernhard: Do you have any considerable amount of such movements?

The Witness: No.

Examiner Bernhard: That is, carload traffic that only moves between Valier and Conrad?

The Witness: No; we don't have any.

Examiner Bernhard: So that is a nominal rate only, then?

The Witness: That is right.

Q. (Mr. Booth, continuing:) The Examiner has just inquired whether or not you have any movements between Valier and Conrad,—

Examiner Bernhard: Carload movements.

Q. (Mr. Booth, continuing:)—carload movements. I would like to find out now, Mr. Atwood, if you can tell me, how much of the carloads which you handled in 1948 out of Conrad, which was 491,—or, out of Valier, which was 491 cars, were handled in interstate commerce?

Examiner Bernhard: What exhibit is that?

Mr. Booth: I will have to apologize to the Examiner. I 273 was jumping into something else on my memory here.

Q. (Mr. Booth, continuing:) The Return to the Questionnaire, on page 11,—on page 13,—I will take it back; it is on page eleven,—shows 540 cars for 1948. That 540 cars includes in and out-bound carloads, does it not, Mr. Atwood? A. It does.

Q. In the reports made by your company to the Montana Railroad Commission you reported as outbound in 1948 491 cars. Is that a correct statement? Will you accept it as correct? A. So far as I know, it is.

Q. The outbound as against the total? A. Yes.

Q. Now, if the 491 cars is correct, can you tell me now how many of those cars were moved in interstate commerce? A. I can't tell you that. They go to Shelby for inspection purposes, and they go to Great Falls for inspection purposes, and what becomes of them there we don't know.

Q. Your billing from here then will be merely to Shelby for inspection? A. That is right.

Q. And you will not have any report as to how many cars move on to other destinations? A. That is right.

Q. So far as your reports are concerned they could all stop at Shelby, or they could all go beyond? A. That is right.

274 Q. Is there any way you can get us any estimate of the amount of traffic handled by your line in earload lots which is interstate in nature? A. The only thing we could give you from our records are those earloads that are billed into interstate traffic.

Q. Do you know what percentage of the cars are so billed? A. No; I don't.

Q. Do you have any idea as to whether or not that percentage would be a true representation of the actual cars transported in interstate commerce? A. I don't think it would be.

Q. Do you have any way you could tell us as to the number of cars transited at Great Falls, for example? A. No.

Q. Do you have any way that you could tell us how many cars are definitely intrastate in nature? A. Oh, yes.

Q. Can you tell me how many cars in 1948 were definitely intrastate? A. I can find out. I would have to look that up. We have a record, so we could determine it.

Q. I wonder if you would obtain those figures for us and present them before the close of the hearing? A. Earloads intra-  
275 state?

Q. Yes; the ones that are definitely intrastate. Now, you may have cars, as I understand your answer, which are transited at Great Falls or some other point, which wouldn't show on that?

Mr. Jardine: Is that cars moving off the Montana Western you are asking about?

Mr. Booth: Yes.

Mr. Jardine: And only in intrastate traffic?

Mr. Booth: Yes.

Mr. Jardine: I just wanted to be sure about that.

Examiner Bernhard: And for the year 1948?

Mr. Booth: Yes.

Q. (Mr. Booth, continuing:) As I understand your statement then, on the grain rates, for example, they are a combination of rates fixed on a pro rata basis, but not through rates? A. That is right.

Q. And your rate between here and Conrad is approximately a cent less on grain rates than it is on local rates,—the difference between eight and a half and nine and a half? A. It would be more than that, because the nine and a half does not include Ex-parte 162 and 166.

Q. I realize that. I wasn't trying to figure the percentage, but it is approximately one cent or a cent and a quarter? A. Yes.

Q. The Great Northern rate from Conrad on is approximately two and one-half cents less? A. Yes.

Q. On ~~interline~~ freight? A. Yes.

Q. Do you know if that agreement of those proportions of the rates is as a result of an agreement made in 1924 after investigation by the Montana Railroad Commission at its hearing held in Valier in May, 1924? A. That is right; it was.

Q. And the divisions fixed in those rates are divisions which have been carried forward subject to the increases granted in the Ex-parte proceedings? A. Yes, sir.

Q. Less decrease granted in the zone rates on grain,—I forget the citation, but we have the I. C. C. citation,—on grain in this area, on rates? A. Yes.

Examiner Bernhard: What was his answer?

Mr. Booth: His answer was "yes."

Q. (Mr. Booth, continuing:) Do you know what your percentage of division is where you do have through rates? A. The basis is twelve and one-half per cent.

Q. Twelve and one-half?

Examiner Bernhard: On all commodities?

277 The Witness: All except those where they are specifically stated in cents per hundred pounds.

Examiner Bernhard: The great bulk would be stated in cents per hundred pounds, would it not?

The Witness: No; they aren't,—not on the division sheet they gave us.

Examiner Bernhard: Will you be prepared to show your division sheets?

The Witness: Yes.

Examiner Bernhard: Before the close of the hearing?

The Witness: Yes.

Examiner Bernhard: Have you those division sheets?

Mr. Jardine: We have the division sheets here.

Examiner Bernhard: Will you give them to Mr. Howard? Were you intending to introduce those in evidence.

Mr. Jardine: I thought if they wanted to introduce it, it is O.K.

Examiner Bernhard: It is already prepared for introduction?

Mr. Jardine: Yes, it is.

Mr. Loble: What is it, any way?



Mr. Jardine: Division sheets.

Mr. Loble: Between the two roads here?

Mr. Jardine: Division of income.

Mr. Loble: I would like to see it.

Mr. Jardine: We have another one. (Hands to Mr. Loble.)

278 Mr. Jardine: It can be introduced in the hearing at this time, with the consent of counsel. Will you mark this as Exhibit No. 15, Mr. Reporter?

(The document referred to was marked Applicant's Exhibit 15, Witness Atwood, for purposes of identification.)

Mr. Jardine: This is the original division sheet off of which these things were copies, and they are true copies.

Mr. Loble: O. K. Whose is that?

Mr. Jardine: This is the one sent to us.

Mr. Loble: From the Great Northern?

Mr. Jardine: Who did that come from, Mr. Atwood? A. From the Great Northern.

Mr. Jardine: We offer in evidence Exhibit No. 15.

Examiner Bernhard: Has he identified it?

Mr. Jardine: Will you identify that as to what it is? Read the title. A. "Railway Standard Division Sheet No. 539-A, showing the division for the Montana Western Railway Company applying on all traffic interchanged at Conrad Montana."

Examiner Bernhard: And what is the effective date?

The Witness: The effective date is April 13th, 1929.

Examiner Bernhard: Is it still in effect?

The Witness: It is still in effect, and there is a supplement back here.

279 Examiner Bernhard: Is there any objection to receiving the exhibit at this time?

Mr. Loble: No objection.

Mr. Booth: No objection.

Examiner Bernhard: It may be received as Exhibit No. 15.

(Applicant's Exhibit 15, Witness Atwood, heretofore marked for identification, was received in evidence.)

Mr. Booth: That is all of my cross examination.

Examiner Bernhard: You say you are through?

Mr. Booth: Yes, that is all of my examination.

Examiner Bernhard: We will probably want to study this division sheet over night and,—

Mr. Jardine: What was that?

Examiner Bernhard: I say, we will probably want to all study this division sheet over the evening and will probably want to examine him on it in the morning.

Mr. Jardine: Either he or Mr. Westimore will be available.

Examiner Bernhard: Do you want to cross examine, Mr. Loble?  
Mr. Loble: Yes.

### Cross Examination

Q. (By Mr. Loble:) Let me, Mr. Atwood, get down to a few generalities, if I may, that I gather from your testimony: For twenty-five years, from 1924 until now,—until February of this  
280 year, or January,—the Great Northern has paid the deficit for operating the Montana Western; that is correct? A.

That is correct.

Q. What that deficit was between 1924 and 1933, I don't think anyone has testified to, as to what the average was a year. Do you know? A. From 1924 to 1933?

Q. You gave it to us from 1933 to 1948, I believe. A. I haven't. it from 1924 to 1933.

Q. It would be less from 1924 to 1933 than 1944 to 1948, wouldn't it? A. It would be a little more.

Q. It would be more of a deficit between 1924 and 1933? A. Between 1924 and 1948 than it would be between 1933 and 1948.

Examiner Bernhard: You mean the average deficit?

Mr. Loble: I am talking about the average.

A. (Mr. Loble, continuing:) I am going to use round figures. You gave us an average deficit of eighteen thousand dollars a year between 1933 and 1948? A. Yes.

Q. That the Great Northern paid to operate the Montana Western; that is right? A. That is right.

Q. Now, what would be the average amount per year the  
281 Great Northern paid in deficit between 1924 and 1933? A. I don't know. I haven't got that.

Q. Is that figure, in your opinion,—would that deficit be a greater deficit or a lower deficit,—it would be higher than eighteen thousand dollars, or lower than eighteen thousand dollars, average? A. It would be higher.

Q. And why? A. There would be a higher deficit in that period.

Q. In other words, the business,—the operation of the Montana Western from 1933 to 1948 would show an improved condition over between 1924 to 1933? A. So far as deficit is concerned; yes.

Q. After all, the deficit pretty well tells the story, doesn't it? A. Yes; it does.

Q. What you have in the bank, or don't have in the bank? A. Yes; that is right.

Q. Now, having in mind that the Great Northern has for twenty-five years paid this deficit, will you tell me why they stopped in January of this year, if you know? A. I don't know. I am just working here.

Q. I see. You just work there? A. Yes, sir.

282 Q. Well, maybe no one knows. It just looks to me like the people of Valier, so far as the Great Northern is concerned, are in the bag. In other words, it is to the interest of the Great Northern, on the figures you gave us, to drive freight out of Valier and into Conrad, isn't it? In other words, they can make more at sixty and a half cents out of Conrad, and let the people here get it there anyway they can, than they can if they deliver it here at Valier, can't they? A. Yes; they can.

Q. In other words,—you know what I mean by "in the bag," don't you? A. I know.

Q. In other words, when these farmers here in Valier and this community go down here to their various elevators to put their grain in there, the Great Northern makes fifty-eight cents off of the grain that comes out of here that goes to Minneapolis, where if they say to them, "You get that up to Conrad any way you can, and we will make sixty and a half cents," it would naturally be to the interest of the Great Northern for them to get it up there, wouldn't it? A. That is the way it figures out.

Q. That is right. That might in some manner account for the great shortage of cars in Valier over other places, might it not? A.

283 I don't believe so, because I have checked on that, and there are too many stations on the Great Northern that are short.

Q. When you get over to Pendroy,—

Mr. Jardine: Just a minute. On that last question, we ask that the record be made to show whether or not,—it is assuming a state of facts not shown by the evidence, that there is a great shortage of cars at Valier, apparently assuming it is much more so here than at some other points, and while there is a shortage of cars in Valier, there is also a shortage every place else.

Mr. Loble: Well, let me put it this way then:

Q. (Mr. Loble, continuing:) I will ask you if it isn't a fact that at Pendroy, where the Great Northern has competition with the Milwaukee, the number of cars available,—the number of cars are much more available there, and have been for the past month or so, than here? A. When I was over there they were getting three cars every other day, and we were getting three a day.

Q. You got three in one day, didn't you, in June? A. We got more than that.

Q. Do you take the position that insofar as Valier is concerned they get as many cars as any place else around? A. They get their share, unless it is Shelby. Shelby might be, on account of being a terminal,—it might be they get more there, but I think we get our share.



284 Q. Now, I got off the beam here a minute,—off the subject. We had eighteen thousand deficit a year, if we take the figures from 1933 to 1948 that the Great Northern has been making up. Every year you run the railroad, according to these figures you run eighteen thousand dollars behind, so that Great Northern pays it. Do you know why,—

Mr. Jardine: Just a minute now. I don't like to continue to object, but that statement isn't borne out by the record. That is your average deficit. It isn't the every year deficit of eighteen thousand dollars..

Mr. Loble: Isn't that the average deficit?

Mr. Jardine: I know, but your question assumes that every year there is a deficit of eighteen thousand some odd dollars.

Mr. Loble: Well, what did he say it was?

Mr. Jardine: He said that was the average deficit?

Mr. Loble: All right, call it "average."

Mr. Jardine: That is what I have been calling it.

Mr. Loble: Call it "average."

Mr. Jardine: That is what it is.

Mr. Loble: Some years it is more and some years it is less.

Q. (Mr. Loble, continuing:) So as to satisfy Mr. Jardine,—

Mr. Jardine: Not to satisfy me.

Mr. Loble: That is the only reason I am doing it, is to  
285 satisfy you.

Mr. Jardine: I don't care what reason you are doing it for, I am objecting because I want to keep the record straight.

Mr. Loble: All right. Are you through?

Mr. Jardine: For the time being, I am.

Mr. Loble: Well, get going, because I am going to ask him again:

Q. (Mr. Loble, continuing:) The average is eighteen thousand dollars a year? A. That is right.

Q. That is, the deficit. Now, can you give us the highest deficit during that time between 1938 and 1948? A. I guess I haven't got it.

Q. Never mind.

Examiner Bernhard: It is in the exhibits that are introduced. It is just a matter of looking them over.

Mr. Loble: While Mr. Jardine is looking at that,—

Mr. Jardine: I think this is the operating revenue, and the costs of operation. Is it the one you have before you, No. 11?

Mr. Loble: I think he must have it here.

Mr. Jardine: Exhibit No. 11?

Mr. Loble: Yes.

Q. (Mr. Loble, continuing:) The highest operating deficit was in which year? A. The deficit is not here. It is the total operating cost and the total operating revenue.



286 Q. We will have to subtract it. I will pass it, because it is a matter of computation, any way. Now, taking the average deficit of eighteen thousand dollars,—that was all right, wasn't it, the way I said that?—the Great Northern has been paying, can you tell me why they have been paying it all these years? A. I don't know.

Q. The Great Northern is not a charitable institution, is it? A. No; it is not an eleemosynary institution, as far as I know.

Q. It is in business for profit, and you know it makes a substantial return on its investment, don't you? A. That is right.

Q. Now, did the Great Northern get anything for meeting this average deficit of eighteen thousand dollars? A. The only thing they got was the business.

Q. Who got the business? A. The Great Northern.

Q. Yes; they got,—in other words, this was a feeder to the line of the Great Northern, wasn't it? A. That is right.

Q. In other words, so far as you were concerned,—your line was concerned, the people of Valier and this community were  
287 producing a revenue that inured to the benefit of the Great Northern, and has all the time; that is right, isn't it? A. Yes.

Q. And the Great Northern has been satisfied for twenty-five years to make up an operating deficit of an average of eighteen thousand dollars in order to get that revenue; isn't that right? A. That is the only thing you can figure out.

Q. Now, the percentage of the rate you have been getting, that is, the Montana Western, is approximately twelve per cent, is it not? A. About that; yes.

Q. In your exhibit here you said that the operating deficit represented,—the eighteen thousand represents two and nine-one-hundredths cents per hundred pounds; is that right? A. That is right.

Q. So, as a matter of fact, the Great Northern by meeting this deficit of eighteen thousand dollars yearly, has been allowing you .029 cents per hundred; that is right, is it not? A. That is what it amounts to, according to,—

Q. That is what it amounts to. So that the Great Northern then, instead of getting fifty-eight cents out of Conrad has been getting fifty-eight cents less .029; that is right? A. Yes.

288 Examiner Bernhard: I hate to interrupt, but I didn't follow you. Where did you get that .029?

Mr. Loble: I beg pardon?

Examiner Bernhard: Where did you get that .029?

Mr. Loble: I got that from Exhibit No. 11, the last page, page three, on that, Mr. Examiner. It is a very illuminating figure.

Mr. Jardine: Yes, it is, Mr. Atwood, and I wish you would check that. I think the point should be before the "29", instead of having a "0" in there.

Mr. Loble: Before what?

Mr. Jardine: I say, I think the point should be before "29."

Mr. Loble: You are not going to change the decimal point after I have got this all figured out, are you?

Mr. Jardine: That point,—

Mr. Loble: I think that is all right. I hope it is.

Mr. Jardine: Is the figure correct there?

Mr. Loble: I think it is. A. So far as I know it is.

Mr. Jardine: It is .029 dollars? A. Two and nine-tenths cents.

Mr. Jardine: Per hundred? A. That is right.

Mr. Loble: She rides, and the decimal point is right?

289 Mr. Jardine: I think so.

Mr. Loble: Do you see where I get that, Mr. Examiner?

Examiner Bernhard: No; I don't. Will you indulge me a little bit? Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record, Mr. Reporter.

Q. (Mr. Loble, continuing:) Now, in order for the Great Northern to pay the deficit of eighteen thousand dollars referred to, it means, and has meant, that they took approximately three cents less in their rate from Conrad to the Twin Cities; is that right? A. Yes, sir.

Q. .029? A. That is,—yes; that is right.

Q. That is the average from 1933 to 1948? A. Yes; that is right.

Q. Well, that being true, and they having done that all these years, if it should be determined that the Great Northern in some hearing,—this or some subsequent hearing,—that the Great Northern should make a different division of the freight rate, the Great Northern wouldn't be in any different position than it is now, if it was required to make a division whereby it gave you .039; that is right, isn't it? A. That is right.

Q. To sum it up, the way it is now the Great Northern  
290 has the right to say, as they have: "We will not loan you this, —or will not pay you this any more?" A. The way it is now; yes.

Q. Whereas, if this Commission, or some other body, should say to the Great Northern, "You should make this division, which you have already made for twenty-five years, and make it under the supervision of the Commission, and you cannot change it without the approval of the Commission," you could still operate this railroad? A. We should be able to, if we get enough to pay expenses.

Q. Yes; and that includes that deficit,—that deficit includes interest due to the Great Northern, doesn't it? A. Yes; it does.

Q. In other words, getting them to pay themselves back. Now, taking up Mr. Booth's figures, if you could out of all of this likewise produce an operating economy of ten or twelve thousand dollars that might result from using a wye, and having the employees of the Montana Western be employees of the Great Northern, and do switching, or whatever else they do on days if they aren't operating this road, that would still improve the picture, would it not? If that could be done? A. Yes; if that could be done.

Q. No one in authority that you know has yet approached the Great Northern with a definite proposition as to whether  
291 or not they would agree to such a proposition? A. No.

Q. Now, the agreement that was made when you pulled up your three miles of track was to pay twenty-five cents per car for everyone of your cars that you ran over the three miles of the Great Northern? A. Yes, sir.

Q. Was that very good business? A. No.

Q. In other words, you had the track there, and you pulled it up and paid rent to run over the next fellow's track? A. Yes.

Q. Who thought that one up? A. That,—

Q. That was the Great Northern?

Mr. Jardine: Answer the question. Tell them what it was.

A. It wouldn't be good business from the standpoint of paying rent for their track, but on the other hand it would cost you more for maintenance of way than the track rental,—or the car rental would amount to.

Q. Well, it cost you less because you didn't pay it? A. That is right.

Q. Twenty-five cents per car,—does the engine count one, or does the engine and tank count two? A. One.

-292 Q. Twenty-five cents to go over that three miles, and twenty-five cents to come back, each day, is that right? A. That is right.

Q. Was that by a written agreement, Mr. Atwood? A. Yes, sir.

Q. Do you know where that agreement is? A. I think I can find it.

Q. If it would be convenient while you are looking for all the other things we are asking for, we will ask you to look for it. A. All right.

Q. Does it run for any particular period of time, if you recall? A. I don't believe so.

Q. Now, in addition to that you have some other operating expenses that might be eliminated: Have you been required to pay any money to any of the personnel at the Conrad depot for any service of any nature? A. Not for a long time.

Q. What did you used to have to do? A. At one time they did pay for part of the service there.



Q. What kind of personnel did you pay? A. Agent and cashier.

293 Q. And how much did you pay? A. I don't remember that.

Q. How long ago was that, Mr. Atwood? A. That was,— I think that was eliminated before I came on in 1928.

Q. Do you pay anything for the depot in Conrad? A. Not now.

Q. Did you used to? A. Yes, sir. We paid for any additions or betterments on it, but we didn't pay rental?

Q. What has that amounted to,—additions and betterments? A. It didn't amount to much. We haven't paid any since,—

Q. Since 1928? A. Since about 1930 or 1931.

Q. You had to make these payments to the personnel in Conrad after you changed that,—tore up your three miles of track and used theirs? A. Yes, sir.

Q. What did the man do? Drive along ahead and take your engine out on the track? A. No; it was the station force, the agent and cashier who handled our station accounts. They handled our accounts down there.

Q. It wasn't any personnel that had anything to do with the operation of your trains? A. Oh, no.

294 Q. Now, if this .029 was required to be allocated to you from the Great Northern by an order of the Commission, it would then bring the percentage you got of the entire rate to approximately 17.14 per cent of the entire rate, would it not? A. The percentage?

Q. Yes. A. I would have to figure that out, but I would take your word for it.

Q. I have a couple of assistants here who figured it out.

Examiner Bernhard: May I have that question read, Mr. Reporter?

(Pending question read by the Reporter.)

Q. (Mr. Loble, continuing:) What I mean, the gentlemen who helped me,—we were trying to figure this out, all of us, and we think we got some real assistance from them, and I think you will find they are usually correct. Now, as a matter of fact, the Great Northern now by paying this deficit, this yearly annual deficit is paying,—amounts to 17.14 per cent of the entire rate, and whether they do it by agreeing to do it, as they are now, and then stop, or whether they do it under the order of the Commission at some future time, there is no difference from a financial standpoint, is there? A. No.

295 Q. Now, as a matter of fact, I wish to call your attention to the fact that the payment of that amount is less than is paid by line carriers in most other instances, and that what



they should be paying is from twenty-five to thirty-three and a third per cent to the originating short line carrier, and in that connection I will ask you if you are familiar with the signature of Mr. John H. McMillan, Jr., president of your company? A. Yes, sir.

Q. I have here in my hand a letter,—I will offer it later,—dated June 2nd, 1949, in which Mr. McMillan in a letter to Mr. Kingsbury says,—in reference to the rate,—the amount the Great Northern allows you: "This has been inadequate to keep the Montana Western alive, as freight revenue simply cannot be originated on a fifteen per cent division of freight. Most other similar instances with which we are familiar give from twenty-five per cent to thirty-three and a third per cent of the originating short line carrier." You haven't any reason to doubt the accuracy of that, have you? You don't doubt it? A. No.

Q. Against he says: "About 1925 it was apparent that the Montana Western could no longer pay its way. It had a heavy debt to the Great Northern Railway. At that time the vice-president and general manager of the Valier Company, the late R. W. Spier, came to St. Paul and offered to sign over to the Great Northern 296 the capital stock of the Montana Western in discharge of its indebtedness. Mr. Kinney was at that time the operating head of the Great Northern, and he refused to accept the capital stock, but requested instead that the railroad carry on and draw on the Great Northern for funds necessary to keep going. The Valier Company, therefore, for the period 1925 to 1948 ran the Montana Western purely as a favor to the Great Northern Railroad, and as a service to the community." You haven't any reason to doubt that, either have you? A. No.

Q. "Early in the current year the Great Northern notified us that they were unwilling further to pay the deficit of the Montana Western. This left us no alternative other than for the road to apply for abandonment." He offered three alternatives:

"A"—That the Great Northern continue to underwrite the deficit; or

"B"—For the I. C. C. to order the Great Northern to increase its division on freight to more in line with accepted practices; or

"C"—For some outside party to continue to underwrite the deficit."

Having in mind this statement made by the president of the company, you don't know of any alternative other than he has 297 suggested, do you? A. No; I don't.

Q. And may I point out that his suggestion "B", "That the I. C. C. order the Great Northern to increase its division on freight rates," can be accomplished without an increase on the division of freight rates simply by requiring the Great Northern to pay a division of freight rates under order of the I. C. C., which

they now do, and have done voluntarily for twenty-five years; is that practical? Do I make myself clear? A. I see what you mean.

Q. Yes. A. In other words they refund to us out of the collection they make?

Q. Yes. They do now when they pay your deficit,—they are giving you an increased division of the rate, because you aren't paying them back? A. That is right.

Q. We just want them to keep on doing that. All right. Now, on cost of operation, I have heard it said,—and that is what I am going to ask you,—that the cost of your operation is greatly increased because of the fact that you have to accept the prices of the Great Northern on repairs and the purchase of equipment; is that correct?

A. No; I wouldn't say it is, at the present time.

298. Q. Has it been in the past? A. There have been times in the past when I caught them overcharging us, but it was straightened out promptly as soon as I called it to their attention.

Q. Whenever you would catch them they would straighten it out? A. Yes.

Q. All right. But I have in mind this observation that has come to my attention, and I want to find out whether or not it is correct: There was an occasion here when you could have in the market purchased a locomotive for this road for around twelve thousand dollars, but not purchase it from the Great Northern, but that the Great Northern insisted that you purchase it from them for about five thousand; then after you got it purchased you had to send it to Havre where it cost thirteen thousand some dollars to put in shape, approximately that? Is that a rumor, or is that correct? A. That is a rumor. We purchased that locomotive from the O. R. & N.

Q. For five thousand dollars? A. For five thousand dollars.

Q. The Great Northern had nothing to do with the purchasing of it? A. They did not.

Q. The cost of repairing it up there at from eleven to thirteen thousand dollars, isn't a rumor though, is it? A. No; that is no rumor.

Q. And you ran into costs on that which were excessive, didn't you? A. Well, that was before my day.

Q. In other words, they,—is this true, if you know: When you sent that engine up there to be repaired it was there for some time, and while it was there being repaired and in the pit you had to pay a rental to the Great Northern for the pit they were using in repairing your engine; is that right? A. I don't know. You see, I didn't have anything to do with that.

Q. Is that customary, though? A. No.

Q. When you take your automobile into a garage to fix a tire they don't charge you rent for the place where the tire is, do they?

A. No, absolutely not.

Q. Now, are there instances where you feel that, operating as you do, owing the Great Northern and being constantly in debt to the Great Northern, that there is a reluctance on the part of your railroad to question items of charges, seeing that you are talking to the guy to whom you owe so much money; is that right?

300 A. Well, you have to have something on the ball.

Q. You have to be a diplomat, don't you? A. Yes, you do.

Q. I agree with you. I have heard you are a very good one. A. Thank you.

Q. Everyone speaks very highly of you. Now, one other thing: Your wages have gone up substantially, have they not? A. They certainly have.

Mr. Loble: I think that is all. Thank you very much.

### Redirect Examination

Q. (By Mr. Jardine:) When you talk about an increase of two and nine-tenths cents per hundred on the freight that is shipped out of here,—the grain that is shipped out of here, would have been sufficient to have made up the deficit over period from 1933 to 1948, inclusive, that doesn't mean that an increase of two and nine-tenths cents per hundred would be sufficient to make up the deficit that is accruing, and has accrued, the last few years? A. No; that is right.

Mr. Loble: I don't believe I quite get that.

Q. Well, what I mean is the last few years the cost of operation,—for instance the cost of your labor has run from twelve thousand in 1912, I think, gradually increased up to now when it is pretty nearly twenty-one thousand, as I recall? A. Yes.

301 Q. And the increase has been a steady increase, has it not?

A. That is right.

Q. I haven't tried to figure out the average deficit, but your deficit, for instance, last year was how much, for 1948? You have got the records there. A. In 1948.

Q. That is right? A. \$37,019.00.

Q. Do you know what it was in 1937,—in 1947?

Mr. Loble: What part of the year was that? What date? To what date?

Mr. Jardine: The one he gave was for 1948.

Mr. Loble: Was that from January to January?

Mr. Jardine: Yes; January to January.

Q. (Mr. Jardine, continuing:) Isn't it, Mr. Atwood? A. Yes.

Q. What have you got the deficit in 1948? A. \$24,284.00.

Q. And what in 1947, approximately? A. That is 1947.

Q. That is 1947? A. Yes.

Q. And for 1946?

302 Mr. Loble: Approximately fifteen thousand dollars, isn't it? A. \$15,084.00.

Q. (Mr. Jardine, continuing:) And 1945, it was approximately \$37,000? Between \$36,000 and \$37,000? A. \$36,033.00.

Q. And in 1944 about \$9,000? A. Yes.

Q. Now, Mr. Atwood, with reference to charging for the pit,—that is the first time I ever heard of it,—do you know whether any charge was ever made for the pit? A. They didn't make a charge for the pit, but they made a charge for floor space occupied in the roundhouse.

Q. When was that? A. Oh, that was quite a while ago,—when it first went over there.

Q. Was it after you were,— A. Oh, it was after. It was during the early years,—it was shortly after 1928.

Q. And this engine wasn't purchased from the Great Northern was it? A. No.

Q. And why didn't you make the purchase from the Great Northern? A. It was purchased by James Sanders who was the superintendent before I was.

Q. And how long had that been purchased before you came on the job? A. I don't know,—

Q. Just approximately? A. Let's see. It was away back in 1916 or 1917, I guess.

Q. You were working for the water company at that time, were you not? A. Yes.

Q. And as you recall the purchase of that locomotive, it was in 1916 or 1917? A. It was back in there some place.

Q. And the repairs to which you refer that was made at the Great Northern shops was made some time after you were general superintendent, or manager, of the Montana Western, or before? A. It was before.

Q. Well, when was it? I thought you said it was made after? A. No; they were made before. That engine, when I became general manager and superintendent, was in good condition.

Q. Do you know when the repairs had been made, approximately? A. I can't tell you right now. I don't know what the date is.

Q. Well, do you know with reference to the time the engine was purchased when the repairs were made? A. It wasn't very long after. About a year or two, I believe.

Q. Now since you have been general manager have you had occasion to object to the charges made by the Great Northern to you for services on many occasions? A. Not very many; no. I have had occasions when I thought they overcharged me for materials. I told them about it.

Q. And approximately how many occasions was that over the period? A. I remember of two specifically.

Q. Two? A. Two specifically, yes.



Q. Is that all you call to mind at this time? A. Yes. There was at one time a twenty per cent overhead they charged in, and I stopped that, and then space rental in the shop, I stopped that. That is about all I can remember.

Q. Now, were there ever any charges made by the Great Northern that you thought were unreasonable that you didn't object to? A. Not that I remember of.

Q. If you thought that any charges were made that weren't in line with what they should be, didn't you make a practice of objecting? Didn't you make an objection when you found it? A. I did.

Q. Irrespective of the fact the Great Northern was footing the bill for the annual deficits? A. That is right.

Q. Were you in any way afraid to object to the Great Northern? A. No.

Q. Now with reference to eliminating of operating expenses, a figure that you gave here of between ten and twelve thousand dollars that you thought possibly might be eliminated in operating expenses,—I didn't get just how you figured that elimination could be made. Will you tell me how there could be a possible savings of ten or twelve thousand dollars? A. On the running part time.

Q. Well, is that based wholly on running part time? A. No. Then you eliminate the line from, and you eliminate your running into Conrad entirely.

Q. What is that? A. You would eliminate your run from Conrad to the junction entirely, but there is one item the gentleman didn't bring out,—and I wasn't asking the questions here; he was doing the asking,—we would have to build a wye, and somebody would have to pay for that.

Q. Somebody would have to pay what? A. For the wye we would have to build.

Q. Well, what would be the cost of a wye, if you had to build one? A. I don't know.

Q. Well, do you have any idea what the approximate cost would be? A. No, I don't.

Q. Can't you give us any estimate? A. I don't know what the length of the legs are. I would have to look that up. I would have to know that before I would know how much rail we would put in.

Q. Before what? A. Before I would know how much rail we would put in.

Q. And in addition to having to build a wye down there, wouldn't it also be necessary that someone perform switching operations from the town of Conrad down to the wye? A. That is right. The Great Northern would have to do that.

Q. Why would the Great Northern have to do that? A. Because they would have to have some way of pulling those cars into Conrad.

Q. Would it be possible for the Montana Western to do that? A. Not unless we went over the Great Northern's tracks, we couldn't.

Q. The Great Northern would have to perform the switching operations at Conrad? A. That is right.

Q. As a matter of fact, don't you know from your past experience or knowledge of your own that with reference to switching when it is by the Great Northern out of Conrad that every time a crew goes out of the town of Conrad to make a switching operation, there is a charge of a whole day for their services? A. That is true.

307 Q. And isn't this out of the town of Conrad? A. Yes.

Q. If the same regulations are in effect every time the Great Northern crew went down to this proposed wye there would be a charge of eight hours for each man that made that trip? A. That is right.

Q. That in addition to their pay they get for their services in Conrad? A. Yes.

Q. That would increase the cost, at least so far as the Great Northern was concerned? A. Yes.

Q. Now, in addition to eliminating this cost, you are basing the partial, — a part of the ten or twelve thousand dollars savings on the assumption that a crew would operate the railroad from the present junction to the town of Valier on part time? A. That is right.

Q. And that part time service would be based on having the necessary crew operate on a part time basis, would it not? A. Yes, sir.

Q. Now, the Great Northern Railway does not have any terminal in Conrad, do they? A. No.

308 Q. The crew that they carry in Conrad is sufficient for their operations in Conrad, isn't it? A. That is right.

Q. So far as the Montana Western is concerned, if it were to operate, — in your judgment, is it possible for the Montana Western to operate between here and a wye on a part time basis? A. No.

Q. And save any money in the cost of operation? A. Not to amount to anything.

Q. And the reason for that is because you don't figure you can hire employees on a part time basis to operate this railroad? A. I don't believe so.

Q. And if the Great Northern operated the railroad under an agreement, if it were possible, with the Montana Western, it would be necessary for them to find some employees who would perform this service on a part time basis? A. That is right.

Mr. Jardine: Now, Mr. Loble, you said you had somebody figure this, — Lester!

Mr. Loble: Yes.

Mr. Jardine: You said you had somebody figure this percentage. I never tried to figure it out. Was that the percentage on the grain shipments?

309 Mr. Loble: The grain; yes.

Mr. Jardine: Who figured it?

Mr. Loble: Mr. Ansell of the Sugar Company.

Mr. Jardine: Is he here?

Mr. Loble: Yes.

Mr. Jardine: Was that figured on the grain rate?

Mr. Ansell: On the grain rate, sixty-six and one-half cents.

Mr. Jardine: And you figure on the total grain rate of sixty-six and one-half cents, our percentage is how much?

Mr. Ansell: It would make it 17.14 per cent would be required.

Mr. Jardine: What I am getting at is what per cent are we getting now?

Mr. Ansell: You are getting now 12.8,—you mean the division percentage?

Mr. Jardine: Yes; that is right.

Mr. Ansell: On a division basis the Montana Western is getting 12.8 per cent. That would leave you with 87.2.

Mr. Jardine: That would leave what?

Mr. Ansell: That would leave the Great Northern with 87.2.

Mr. Jardine: I thought you said that would leave us 87.2?

310 Mr. Ansell: And the other way of doing it, making it come out even, would mean the Montana Western would have to have 17.14 per cent.

Mr. Jardine: That is, if they got two and a half cents a bushel more?

Mr. Ansell: 2.9.

Mr. Jardine: 2.9 cents; yes. And that is assuming, of course, that the 2.9 would be sufficient to carry their operating deficit at the present time?

Mr. Ansell: That is based on the average.

Q. (Mr. Jardine, continuing.) Mr. Atwood, in order to get any additional rate out of the freight,—out of the grain that originates in Valier with the Great Northern, it would be necessary we have joint rates on outgoing freight? A. That, I believe, would be the best way out of it. Mr. Loble suggested leaving the rates the way they are, and when the Great Northern had collected their fifty-eight cents they would pay back to us 2.9 cents,—or whatever it is,—out of that to make up the deficit.

Q. Well, that would have to be through some joint division, wouldn't it? Wouldn't you have to have joint rates in order to get that? A. There would have to be an agreement on it. It would have to go through the financial department; it couldn't go through

the operating department. I think a joint rate would be the best thing and have a division split.

311 Q. Now, you said at one time the Great Northern charged twenty-five cents a car, both ingoing and outgoing, over the trackage, that three and two-tenths miles. Do you recall when that was eliminated, approximately? A. No; I don't. I don't remember.

Q. Do you have any idea? Was it within the last two or three years? A. Oh, no; it was back in the twenties.

Q. When? A. Back in the twenties or thirties,—I think it was in 1931 or 1932,—somewhere along in there.

Q. Was it probably in excess of fifteen years ago? A. I believe it would be; yes, I don't remember that.

Mr. Jardine: I think that is all.

Recross Examination.

Q. (By Mr. Loble:) You are probably paying interest on that, though, aren't you? A. I haven't seen any bills.

Q. They don't bill you, but when they compute the interest, you don't know but what you are still being charged twenty-five cents per car? A. Might be.

Mr. Jardine: Just another thing in connection with that:

Further Redirect Examination

312 Q. (By Mr. Jardine:) The only interest that is charged the Montana Western by the Great Northern Railway is the interest on this \$165,000 first mortgage bonds, isn't it? A. That is all the interest bills I ever saw.

Q. You never saw any charge of interest on any of the other money that the Montana Western owes the Great Northern? A. No; I haven't.

Q. If there had been those charges, you would have seen them, wouldn't you? A. I would have.

Q. Then there haven't been any? A. No.

Q. Since 1928, when you took over.

Mr. Jardine: I think that is all.

Mr. Loble: Thank you.

Examiner Bernhard: I want to clear up one point: Counsel has asked a lot of questions and made certain assumptions as to increasing the division on grain rates. As a matter of fact, there are no divisions, as such, on grain rates, using that in its proper sense?

The Witness: That is right.

Examiner Bernhard: Grain rates are combination rates?

The Witness: That is right.

Examiner Bernhard: Made up of the Montana Western's individual rates, plus the individual rates of the Great Northern?

313 A. That is right.

Examiner Bernhard: And its connections?



The Witness: That is right.

Examiner Bernhard: So that when the word "division" is used in that case, what is really meant, I take it, is the lowering of the individual rate of the Great Northern and its connections, and increasing by the same amount the individual rate of the Montana Western?

The Witness: That is right.

Examiner Bernhard: The twelve per cent,—the twelve and one-half per cent that has been referred to as the share that the Montana Western gets relates to grain rates only?

The Witness: The twelve and a half per cent.

Examiner Bernhard: The twelve and a half per cent,—that relates to grain rates only?

The Witness: They were talking about twelve per cent. I think that was,—let me see here,—I think that was before they added the two and nine-tenths cents to the eight and a half,—eight and a half divided by sixty,—whatever that is,—divided by sixty-six and one-half, I think that would be it. I think it would be twelve per cent, then it jumps to seventeen and some odd per cent when you took your 2.9 cents and added it to the 8.5 cents. If you see what I mean?

Examiner Bernhard: Will you speak a little louder, please?  
314 Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record: Will you explain for the record, Mr. Atwood, how the twelve per cent was made up, and what traffic it relates to,—the twelve and one-half per cent as the Montana Western's share of certain traffic? I want to know what traffic it relates to, and how it was determined.

The Witness: Well, he is the gentleman there (indicating) who figured it.

Examiner Bernhard: Will you explain it to the record?

Mr. Loble: A little louder, Mr. Atwood.

The Witness: That twelve per cent,—

Examiner Bernhard: Twelve and one-half per cent.

The Witness: Before you got the seventeen per cent, before the 2.9 cents was added?

Examiner Bernhard: Yes.

The Witness: That eight and one-half cents is twelve per cent of 66.5 cents.

Mr. Loble: That is right.

The Witness: It is a little better than that.

Mr. Loble: What is that?

The Witness: I say, it is a little better than that.

Mr. Loble: 12.8 per cent?

The Witness: 12.8, that is right. Is that satisfactory?

315 Examiner Bernhard: That is the relationship of the Montana Western's share of rates from grain traffic going to the Twin Cities and eastern terminals?

The Witness: That is right.

Examiner Bernhard: I understand. Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: We will adjourn at this time until nine o'clock tomorrow morning.

(A recess was taken at 5:30 p. m., Monday, July 11, 1949, to reconvene at 9:00 a. m., Tuesday, July 12th, 1949, at Valier, Montana.)

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High School Gymnasium,  
Valier, Montana,  
July 12, 1949—9:00 A. M.

Met pursuant to adjournment of Monday, July 11, 1949.

BEFORE:

C. A. BERNHARD, Examiner:

Appearances:

(Same as on preceeding day, July 11, 1949.)

320

Examiner Bernhard: We will resume the hearing.

C. E. Atwood, having been previously sworn, resumed the witness stand:

Redirect Examination

Q. (By Mr. Jardine:) You are the same C. E. Atwood who was on the stand yesterday? A. Yes, sir.

Q. Now, yesterday in connection with the matter that was referred to concerning a wye down at Conrad, I think you testified there was,—not at Conrad but at the junction near Conrad, three and two-tenth miles north of Conrad,—at present there is no wye? A. No; there isn't.

Q. And I have asked you to prepare an estimate of the cost of a wye, and in connection with that would it be necessary if a wye were built down there, to build a siding? A. It would be.

Q. Will you tell us why a siding would be necessary. A. You can't put a wye in at the junction.

Q. Why? A. On account of the ground. It would take a fill all the way around the wye. You would have to go west of there,—west of the bridge.

Q. West of the present bridge across the Dry Fork on the Montana Western to put a siding in there? A. To put a wye in.

Q. To put a wye in? A. You can put a siding in at the junction.

Q. You can put a siding in at the junction? A. Yes.

Q. But the wye would have to be across the bridge? A. Yes.

Q. Across the Dry Fork, west of the Dry Fork bridge? A. Yes.

Q. And that would be adjoining the present railroad bed of the Montana Western? A. Yes, sir.

Q. And you made a preliminary estimate of the cost, did you not? A. I did.

Mr. Jardine: We ask that be marked,—I think it is,—Exhibit 16, for identification.

(Document referred to was marked Applicant's Exhibit 16, Witness Atwood, for purposes of identification.)

Q. (Mr. Jardine, continuing:) And showing you Applicant's proposed Exhibit No. 16, is that the estimate of the cost that you estimated the cost of the siding and wye at Conrad? A. It is.

— Q. If one were put in? A. Yes.

322 Mr. Jardine: We offer Applicant's Exhibit 16, so marked for identification, in evidence.

Mr. Loble: No objection.

Mr. Booth: No objection.

Examiner Bernhard: It may be received in evidence as Exhibit No. 16.

(Applicant's Exhibit No. 16, Witness Atwood, heretofore marked for identification; was received in evidence.)

Q. (Mr. Jardine, continuing:) You were asked yesterday in connection with one matter, that you prepare a list of the number of cars billed from the Montana Western Railway that you could tell from your records that were definitely billed only to points in Montana in the year 1948. A. Yes.

Q. And you made that check, and just to refresh your recollection, is that the check that you made? A. It is.

Q. And will you tell us what that check shows? A. The cars that were billed out of Valier to points in Montana.

Q. Will you tell us how many it shows? A. Twenty-nine.

Q. That includes fifteen cars of livestock and fourteen cars of beefs. A. That is right.

323 Q. You made an estimate,—

Examiner Bernhard: You are not introducing that?

Mr. Jardine: No.

Examiner Bernhard: May I have it?

(Mr. Jardine hands to Examiner.)

Q. (Mr. Jardine, continuing:) You made an estimate yesterday, Mr. Atwood, of the possible savings that could be made if the Montana Western simply ran to this wye and siding,—or proposed wye and siding that I just referred to? A. That is right.

Q. And in connection with that you based your estimate, did you not, upon the proposition that you would be able to get crews,—that crews could be obtained to run on a part time basis? A. That is right.

Q. That is, your estimate was based on that? A. It was.

Q. So far as the Montana Western Railway Company is concerned, you know, as a matter of fact, that it is impossible to get crews on a part time basis? A. That is right.

Q. So that possibility so far as the Montana Western Railway Company operating on a part time basis simply does not exist? A. No.

324 Q. That is, any savings so far as the Montana Western is concerned? A. No.

Q. Now, do you know whether or not there are any crews of the Great Northern operating in Conrad? A. There are none.

Q. Conrad isn't a terminal, is it? A. It is not.

Q. And if the Great Northern were to operate the Montana Western under an agreement between the two, assuming that the Great Northern was willing to do it, it would likewise be necessary for them to obtain crews on a part time basis, would it not? A. That is right.

Q. And so far as you know, there is no possibility of that being done? A. No.

Q. So, so far as any chance of operating and making this proposed saving, so far as you know there is no possibility of doing so? A. No possibility that I know of.

Q. Now, with reference to the public convenience and necessity requiring the operation of the railroad, the Montana Western Railway, as it is now operated between Conrad and Valier, will you state in your opinion if it is necessary,—or if public con-

325 venience and necessity require the operation of the railroad?

A. No doubt it is a convenience, but I doubt very much if it is a necessity. I don't believe it is.

Q. You don't believe it is a necessity? A. No.

Q. Why don't you believe it is a necessity to continue to operate? A. My judgment is formed on the amount of produce that is trucked out of here, and has been trucked out for a good many years, and things that are trucked in.

Q. And in your estimation, will available traffic at the present time and in the foreseeable future be sufficient to produce the reve-



must required to meet the cost of transportation? A. Not that I can see. I don't see where there is enough.

Q. You know there isn't at present? A. No.

Q. And in the foreseeable future you can't see it? A. No.

Q. So, in your estimation, public convenience is served by the operation of this railroad, and necessity is not,—it is not necessary?

A. That is the way it looks to me.

Q. And you feel that the products shipped out of this community as a whole would be shipped by truck at approximately the same expense, if the railroad were abandoned?

A. Yes.

Mr. Jardine: I ask that you don't write this down, Mr. Reporter. I just want to ask the Commissioner a question.

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record, Mr. Reporter.

Q. (Mr. Jardine, continuing:) Mr. Atwood, you have in your hand Exhibit No.,— A. Fifteen.

Q. Exhibit No. 15. Will you tell us what that is? A. It is headed "Great Northern Railway Company, Freight Traffic Department," entitled "G. N. Railway Standard Division Sheet No. 539-A, Showing Divisions with the Montana Western Railway Company Apply on All Traffic Interchanged at Conrad, Montana," and then in parentheses: "(Except where otherwise specifically provided in individual Division Sheets to Tariffs.)"

Q. Will you explain that,—

Examiner Bernhard: Mr. Atwood, may I ask a question first? This division sheet only applies to divisions of joint through rates; is that correct?

The Witness: That is right.

Examiner Bernhard: And has no reference to shipments that move on combination rates?

327 Q. (Mr. Jardine, continuing:) Will you explain that? A.

Yes. It was issued on January 31st, and effective April 13th, 1929,—it says here.

Examiner Bernhard: And is still effective?

The Witness: And is still effective. Now the first column is the item number. That is just the numbers of the items. The next column is Commodity Carloads.

Examiner Bernhard: As you comment, will you refer to the item in the lefthand column?

The Witness: Yes. Items 4, 10 and 15 are covered in the second column by "All freight except as otherwise provided herein." Now, on Item 4, it says "Between (except as noted)." "Great Northern

Railway Eastern Terminals and stations on the Great Northern Railway in Minnesota, Wisconsin, Iowa, North Dakota and South Dakota, also points beyond G. N. Railway Eastern Terminals." In the fourth column,—there are four stations on the Montana Railway Company,—that is "Between and,"—that is between the Great Northern and stations on the Montana Western Railway Company, and points beyond the Great Northern. Now, in the fifth column it is headed, "Montana Western Railway Company. Proportions in cents per hundred pounds, (Except as noted), via Conrad, Montana," "Twelve and one-half per cent of through rate or proportion of through rate accruing west of G. N. Ry. Eastern Terminals, or interior junctions west thereof."

323 Examiner Bernhard: Will you explain what traffic that relates to?

The Witness: Yes. Now, if we have a shipment originating at Minneapolis, a through rate to Valer on that, our division on the through rate would be twelve and one-half per cent, or one-eighth. However, if that shipment originated in Chicago and came over the Burlington, there would be a division sheet,—not this one, but another division sheet which would show the division between the Burlington and the Great Northern, and where the Burlington would take out their proportion that would leave the proportion the Great Northern gets on the through shipment, and then twelve and one-half per cent would be applied to the Great Northern's proportion, and that is what we would get, one-eighth.

Examiner Bernhard: What kind of traffic moves under this item?

The Witness: This is all carload traffic except those items, those commodities that are shown later in the tariff and specifically noted and given specific divisions.

Examiner Bernhard: Sort of a residue provision?

The Witness: That is right. Now, Item 10 works the same way, except that is between Omaha, Kansas City, and points taking the same division, as described in C. B. & Q. G. F. O. 8300-B, G. N. Ry. Standard Division Sheet No. 193-A, or re-issues, and stations on the Montana Western Railway. In other words, that comes 32¢ from the South. Then we get twelve and a half per cent of through rate, or proportion of through rate accruing west of Omaha, Kansas City and so forth. That works the same way as the one above.

Examiner Bernhard: Do you handle any traffic that moves under that item?

The Witness: Once in a great while we get something. I know of one time we got a carload of corrugated galvanized steel roofing that came through on a through rate and we got a division on it,—on a joint rate, I mean.

Examiner Bernhard: There is no substantial volume of traffic moving under that item?

The Witness: No, there is not.

Examiner Bernhard: Item 15,—

The Witness: Yes.

Examiner Bernhard: That relates to class rates?

The Witness: That is class rates.

Examiner Bernhard: And that relates only to your L. C. L. traffic?

The Witness: That is right. Well,—go ahead.

Examiner Bernhard: Which, in a year, is not very voluminous?

The Witness: No.

Examiner Bernhard: In revenue?

330 The Witness: No. We might,—it is very improbable,—we might have a carload which would not have any commodity rate applicable, and in that case then we would have to use class rates.

Examiner Bernhard: That seldom happens?

The Witness: It hasn't happened that I know of there.

Examiner Bernhard: Then I suggest you pass over Item No. 15.

The Witness: All right. Item 25,—the same heading. This comes down to commodities. Here is cement, straight or mixed carload, as described in G. N. Ry. G. F. O. No. 1190 series, from Hanover, Montana, Heath, Montana, to stations on the Montana Western, and that is a specific cents per hundred pounds division. Six cents is what it gives here.

Examiner Bernhard: Is that modified by a supplement?

The Witness: That is, I believe,—yes; that was changed effective February 10, 1932, and cement, straight or mixed carloads, described in G. N. Ry. G. F. O. No. 1190 series, Hanover, Montana, and Heath, Montana, to Montana Western Railway Company stations, and it says, "Cancelled, for Division "C," Division Sheet No. 1 to G. N. Ry. G. F. O. 3159-A, or re-issues." You have to refer to that division sheet in order to find out what our division would be.

Examiner Bernhard: Can you state, without referring to that, what your divisions are at the present time?

331 The Witness: I don't know. I would have to look at that before I would know.

Examiner Bernhard: Do you have it here?

The Witness: No, I don't believe it is here this morning. We can get it.

Examiner Bernhard: Will you get it later in the day?

The Witness: I will try to; yes.

Examiner Bernhard: And supply that information?

The Witness: Yes, sir.

Mr. Jardine: Will you tell me just what that is so I will be sure to get it? A. That is Division Sheet No. 1, G. N. Railway, G. F. O. No. 3159-A.

Mr. Jardine: Is that what you want to get?

A. Yes.

The Witness: Then the next item, No. 30, is coal,—

Examiner Bernhard: Mr. Atwood, if you will make this in summary form to the extent you can, without reading the information on here,—if you will explain it in your own way so we will understand this item?

The Witness: Yes; I will try to.

Examiner Bernhard: Refer to your item number, and then give us the significance of the figures in the fifth column.

The Witness: O. K.

Mr. Loble: What are you referring to, Mr. Examiner?

Examiner Bernhard: I am referring now to Item 30.

332 Mr. Loble: Coal?

Examiner Bernhard: Coal; yes.

The Witness: Coal divisions between mines in Montana and the Montana Western Railway is given in cents per ton; lump coal is seventy cents per ton, and slack coal is sixty cents per ton.

Examiner Bernhard: That is your division?

The Witness: That is our divisions. Now, in No. 35 there are some more coal rates between points in Montana, Chinook, Big Sandy, and so forth,—the other was from Bridge and Fremberg and so forth. One comes from the south and the other from other directions,—the same divisions, seventy cents lump coal, and sixty cents slack.

Examiner Bernhard: Refer to Item 55 now.

The Witness: Item 55, that is lumber. Now, that is from Montana, Washington, Idaho, Oregon, British Columbia,—to your stations are shown on the tariff, and the tariff is cited over there.

Examiner Bernhard: And in your fifth column to the right certain districts are referred to?

The Witness: Yes.

Examiner Bernhard: That is your tariff districts?

The Witness: Groups.

Examiner Bernhard: Groups?

The Witness: Yes; all points in a group take the same  
333 rate, and the groups are referred to here as "A", "C" and "D", and the division on "A" and "C" are seven, Manson; eight, Williams; and eight and one-half, Valier; on "D" it is four and one-half, Manson; five, Williams; and six, Valier. Those groups would have to be looked up in this Pacific Freight Tariff Bureau No. 58, which is shown under "commodities." Item No. 60 is lumber.



That is from Kalispell, Athens and points in Montana to points on the Montana Western. The divisions vary from four and one-half cents to six cents.

Examiner Bernhard: Item 65?

The Witness: Item 65, Petroleum and petroleum products, Casper, Wyoming, Glen Rock, and so forth, points in Wyoming to the Montana Western Railway Company. This is split up into different classes for petroleum products,—refined oil, six cts; smudge oil, six cents,—

Examiner Bernhard: You don't read them, because they are in the record. If you will just explain that?

The Witness: That is our division.

Examiner Bernhard: That is your division?

The Witness: Yes, sir.

Examiner Bernhard: In cents per what?

The Witness: In cents per hundred pounds.

Examiner Bernhard: Now, passing to Item 40.

The Witness: No. 40 is coal, lump and slack, from groups 334 in Wyoming to points on the Montana Western, seventy and sixty cents, the same divisions we had before.

Examiner Bernhard: Now, pass to Item No. 45.

The Witness: Item 45? That is the same thing, for Roundup, Stark and Woodward, Montana.

Examiner Bernhard: Item 50?

The Witness: Item 50 is livestock, as shown in G. N. Railway G. F. O. No. 1410 Series, from Montana Western Railway Stations, to stations shown in tariffs. That shows twelve and one-half per cent of the rate of the Great Northern Railway to eastern terminals on the Missouri River, or proportions west thereof, shown in Division Sheet to G. N. G. F. O. 1410 Series, subject to maximum proportion of \$15.00 per car.

Examiner Bernhard: That may require a little more information. Will you make further comment on that, as to what the twelve and one-half per cent applies to?

The Witness: The twelve and one-half per cent applies to the joint rate to the,—or that portion of the joint rate to the eastern terminals on the Missouri River, or proportions west thereof. Now, you take twelve and one-half per cent, and if it is over fifteen dollars you have to cut back to fifteen dollars, and if it is less than fifteen dollars you get all of the twelve and one-half per cent proportion.

335 The Examiner: Is there much traffic that moves, under that item?

The Witness: No, not very much.

The Examiner: Roughly, how much a year?

The Witness: Well, that is pretty hard to tell.

Mr. Jardine: You have a sheet there, haven't you, that shows the number of cars of live stock shipped out? That might give you an idea.

The Witness: Here is 1948. We have one car of cattle; twenty-eight cars of sheep. That is all.

The Examiner: Did they move under this item?

The Witness: They moved under that item, if it was moved out of the state. I can't tell you whether this all moved out of the state, or not. If it moved out of the state it would be under that item. It doesn't make any difference,—if it was inside the state, it would be all right, too.

The Examiner: Passing to Item 70.

The Witness: Item 70, petroleum and petroleum products. This refers also to stations shown in G. N. Railway G. F. O. 1957 Series in Montana,—from stations shown in G. N. Railway G. F. O. 1957 Series in Montana to Montana Western Railway Company Stations; refined oil and commodities taking group "A" in the tariff, a six cent division, and crude oil and commodities taking group "B" in the tariff, four and one-half cents, the Montana Western Railway's division.

336 Examiner Bernhard: Passing to Item 75.

The Witness: Item 75? Item 75 is gypsum plaster and stucco, from Hanover, Montana, and Heath, Montana. The Montana Western Railway's Division is six cents per hundred pounds. Then here is something here, a foot-note, it says: "Local or proportion rates to and from Conrad, Montana, to be observed as maximum proportion." In other words, if applying the division sheet above produces more than our local or proportional rates, then we have to drop back to the local or proportional rates.

Examiner Bernhard: Has that been modified by supplement?

The Witness: You mean,—then there is a note on this Item 75, plaster and stucco, "Effective 2-16-30," it says, "Effective 4-3-29 to 2-15-30 inclusive, allow Montana Western Railway seven cents per hundred pounds." That would raise that six cents there,—

Examiner Bernhard: Only for that period?

The Witness: Only for that period; yes, sir. Then there is plaster board that has been brought in, that is Item No. 80, that division is based on division sheets of the Great Northern G. F. O. Nos. 3782, 3783 and 3784 Series. That is effective August 1st, 1937. Then there is the cement. I went over that before, and here is gypsum, and plaster again,—that has been modified.

Examiner Bernhard: You have reference now to Item 337 75-A?

The Witness: Item 75-A. That has been modified. It is from Hanover, Montana and Heath, Montana, to points on the

Montana Western. It refers to Division Sheet No. 1 of the G. N. Railway, G. F. O. No. 5159-A.

Examiner Bernhard: You don't know what that is?

The Witness: No.

Examiner Bernhard: Is there any substantial movement of that commodity under that item?

The Witness: No.

Examiner Bernhard: We will pass it then. Now, has he covered all of the material that he was to look up.

Mr. Jardine: I think so, hasn't he, Lester?

Mr. Loble: I think so.

Examiner Bernhard: Mr. Booth, you may cross examine.

### Recross Examination

Q. (By Mr. Booth:) Mr. Atwood, in connection with your Exhibit No. 16, the exhibit is based on the necessity of constructing a wye at the junction. Is there any reason why the operation could not be operated by the train backing up and eliminating the necessity of a wye? A. When you are backing up, you are running into considerable danger in backing up a train. The tender is lighter, — lighter than your locomotive, and it isn't a good policy to continue to back up. It can be done, but you have to take it slower, and with the gas-electric, it is the same thing. Your weight is all in the front end, your motors and everything. It is not good operation to be backing up. It is made to run ahead; it isn't made to run backwards.

Q. Do you feel that if you were to operate between here and the junction it would be absolutely essential to have a wye so you could get the engine turned around and get it ahead? A. I do.

Q. And the expense of building that wye would run to eighty-three hundred dollars, according to your estimate? A. That is what I would estimate it to be.

Q. Aren't there a considerable number of runs, particularly where, for instance, where you have engines helping over the mountains, — A. (Interposing:) Yes, sir.

Q. (Continuing:) — or little short runs where they do back up their equipment for a matter of ten or fifteen miles? A. Yes; there are, but they run slow. They don't make any time at all. We have two trips to make a day within a reasonable time. We can't be puttering along at three or four miles an hour.

Q. Well, if you are only going to go seventeen miles, it doesn't make very much difference, does it? A. It makes a difference when you get into overtime.

Q. If you made two round trips a day, your total distance of seventeen miles would be sixty-eight miles? A. That is

right. Then you have got to switch your train in here, and have to switch your train out down at the junction, and you have to make your pick-ups, and then you come back here and you have an hour off for lunch.

Q. How many days during a year would it be necessary to run two trips a day? A. One time we ran two trips a day for over a month.

Q. How many cars do you have on a trip? A. Twelve.

Q. Is that about your maximum? A. That is all we can handle, grain cars.

Q. Now, on the construction of the siding, if the Great Northern were to put in a station there, so that they could drop cars at the wye, wouldn't the probability be that the Great Northern would construct that siding in its entirety, or, at least, aid in the construction of it? A. Well, with the atmosphere what it has been in the last three or four months, I don't believe they would.

Q. That would be primarily a Great Northern operation siding, would it not? A. Oh, yes; they would set our cars in, and take our loads out.

Q. Then, in effect, it would be a part of the system which  
340 the Great Northern should install, so far as the siding is concerned? A. You have got beyond me there. It depends on the policy of the Great Northern, how they run their business. I couldn't tell you that.

Q. If the Great Northern did install that siding, it would of course eliminate the \$6,280.00, which you estimate as the cost of the siding? A. That is right.

Q. And if for a matter of time, until such time as the revenue was sufficient to do it you were to operate without the wye, you could likewise eliminate that for a time, could you not? A. Well, I don't know. I wouldn't want to be responsible for the operation of that without something to turn that equipment on.

Q. Mr. Atwood, your company makes monthly reports to the Board of Railroad Commissioners, does it not, as to carloads shipped? A. It does.

Q. And that report is made on the basis of showing outbound cars only; it doesn't reflect inbound cars? A. No.

Q. And the report is broken down in accordance with the standard printed list showing the various commodities shipped?

341 A. That is right.

Q. I have had prepared in the office a statement showing the carload shipments on the Montana Western Railway for the eleven years, 1938 to 1948, inclusive, and I will ask you to look at that statement and see whether it appears to represent the reports which you have made? A. It does.



Mr. Booth: I may state to counsel and to the Examiner that his summary was made up from the official records of the Board of Railroad Commissioners, and that under the law I am the official custodian of those records. It is a correct copy, and I would like it marked at this time.

(The document referred to was marked Protestant's Exhibit 17, Witness Atwood, for the purposes of identification.)

Examiner Bernhard: It has been marked Exhibit No. 17.

Mr. Booth: In accordance with the stipulation of counsel, we offer this exhibit in evidence.

Mr. Jardine: It is No. 17, for the record?

Examiner Bernhard: No. 17; yes.

Mr. Jardine: We have no objection. We believe when Mr. Booth says he took it from our reports, that so far as humanly possible, it is a correct summary of those reports.

Examiner Bernhard: It may be received as Exhibit No. 17.

342 (Protestant's Exhibit 17, Witness Atwood, heretofore marked for identification, was received in evidence.)

Mr. Booth: That is all the examination I have.

#### Further Recross Examination

Q. (By Mr. Loble:) Mr. Atwood, following the line of examination by Mr. Booth, isn't it a fact that if you had this wye in there, and you operated part time, say, three days a week freight, not passenger, freight,—or two days a week, that so far as the I. C. C. rules are concerned, or standard inspections, or jurisdiction of the I. C. C. or even Union control, that you would be free of all that? A. In the first place, we can't operate three times a week. I want that on the record.

Q. I am using that as an assumption? A. Yes. All right. Now, as I understand the Interstate Commerce Commission law, any shipment we accept here to be billed beyond, or moved beyond, Conrad into interstate traffic brings us under the Interstate Commerce Commission's rules.

Q. Well, I can't agree with that statement in its entirety, but isn't this the fact: That the Great Northern on its tracks going from Great Falls to Shelby, going along there, could pick up your cars to put on that siding, spot cars there, and there would be no cost involved to the Montana Western? So far as the Great Northern is concerned? A. I think they could set the cars out there

343 without any cost.

Q. Isn't it a custom to have a box there where the waybills are put in, where the crew of the Great Northern passing through on the main line pick up these waybills, pick up the cars, spot the

cars there, and it is a very simple operation that is in quite general use? A. That is right.

Q. Isn't it likewise true that if you had an operation of three times a week, exclusively freight, not passenger, that you could use any employees you wanted to use, to operate that engine and train?

A. That is right, if you could run that way.

Q. Yes. In other words, if you could run three times a week, the number of employees you would use, their compensation, and all things related to it would be solely between you and that employee, would it not? A. That is right.

Q. By going over the Great Northern tracks, as you have now, after you abandoned your road, you subject yourself to various types of overhead and expenses that didn't exist before,—by abandoning the road I refer to the three miles near Conrad? A. So far as wages are concerned, I don't believe you can hire a man who is competent for less than the Union scale. Most of those  
344 men are Union men.

Q. Well, will you answer the question? Did you get my question? A. Yes; I got your question. I think that answered it. So far as any rentals that might accrue on the use of the facilities at Conrad, that would be eliminated, of course.

Q. No; but when you went over and abandoned the three miles,—went over onto the Great Northern's tracks, you came under the jurisdiction of the I. C. C., and came under the jurisdiction of the Unions in reference to the number of employees, matters of inspection, and many things you didn't have before? A. We were under the I. C. C. before. Our men had to be examined by the Great Northern on the Great Northern's Book of Rules.

Q. They became subject to the Great Northern's rules, but without the benefits, didn't they? They do not get retirement, do they? A. No.

Q. Now, you say that it isn't possible to operate three days a week; is that right? A. No, it isn't.

Q. Did you ever make application to do it, to the Board of Railroad Commissioners? A. Some things are evident without having to prove it. Your men wouldn't work three days a week. Who  
345 is going to work for half time. He wouldn't have enough to keep himself on.

Q. I will go into that in a minute. Did you ever make application,— A. No.

Q. You didn't make application? A. No.

Q. If you were operating on a three-day week, the employees you would have that would run that railroad,—you might run it by one or two men, might you not, if you had such employees and if you gave them other employment, isn't that right? A. No; you can't

run it with one to two men. How are you going to run the gas-electric with one man?

Q. How many men does it take? A. It takes three.

Q. All right, three. Have you always had three on there? A. At least three, on that one; yes.

Q. Did you ever run this road with less than three? A. Yes; with a small White motor, that didn't pull a load.

Q. Well, you don't think you could run it with two now? A. You could run it with two except when you have loads to switch out and things like that, in the fall.

Q. Your present engineer, Mr. Wentworth, you say is a very good mechanic, is he not? A. Yes, sir.

346 Q. Your company is co-related with the,—or related in operations with the Valier Company that has extensive holdings in connection with the water development and the maintenance of the water system, why couldn't a mechanic as good as that be used by you part time in connection with the improvement and maintenance of your water system? A. The two conflict.

Q. Well, what is so conflicting about it? A. Well, you get into the fall when the grain season is on, and you have your water company with their maintenance season on at the same time. The engineer wouldn't have any time to and work with them, and their construction end of it, when they are using earth equipment and things like that, doesn't run in the summer time when they are full of water.

Q. Are you basing your statement that it is impossible to get anyone part time on conditions in the past, rather than what they may be in the future? A. Well, if the future brings on a depression you could probably find plenty of them.

Q. And they would work part time? A. Yes; until the depression is over.

Q. Well, you are aware of the fact, aren't you, that unemployment in large centers, and unemployment generally around the United States is on the increase, aren't you? A. Yes.

347 Q. And jobs are harder to get in Valier? A. Yes.

Q. And men are easier to get? A. They are, in your large centers. It hasn't come out here, yet.

Q. Then why do you resist my questions of any improvement, or any possibility of operating this road,— A. Because I have worked on that for twenty years. I have tried my best to cut that down to three days a week, and I never could figure where it could be done. Maybe you could do it; I can't.

Q. Maybe I could,—maybe someone else could? A. That is right.

Q. But you don't want to? A. Yes, I do, if I can, but I am not going to go out and stick that thing in and lose my men, and then have to go back to six days a week again.

Q. No. A. That would make a fool out of everybody.

Q. But you never tried? A. Yes; I did.

Q. When have you ever tried to run it three days a week? A. I haven't done it physically; no.

Q. So far as truck operations are concerned,—so far as  
384 the operation of this road is concerned, you say that public necessity and convenience,—public necessity doesn't exist, but convenience does; is that right? A. Yes.

Q. And when did you come to that conclusion? A. I came to that conclusion a long time ago.

Q. Years ago? A. About ten or fifteen years ago; yes.

Q. In 1947 a man by the name of Aitken made application to operate a trucking service here, did he not? A. He did.

Q. And that is when you appeared before this Commission, didn't you? A. Yes, sir.

Q. And at that time you weren't of the opinion as you are now that no public necessity and convenience existed for the operation of this road, were you? A. No, I was trying to get the business,—hold the business, is what I was trying to do then.

Q. In 1947,—which wasn't years ago,—you appeared before this Commission and testified that trucking service wasn't needed here; that the railroad was adequate, and met the public necessity and convenience, didn't you? A. Yes, sir.

Q. And that is just opposite to what you are saying now,  
349 isn't it? A. You mean in that hearing?

Q. Yes. A. Yes; I was trying to hold our business.

Q. What difference does it make what you were trying to do,—the facts are the facts either time, aren't they? A. Have it your own way.

Q. In other words, it makes a difference as to what you are trying to do as to what the figures show, doesn't it. This was before the Board of Montana Railroad Commissioners? You know that? A. Oh, yes; I know that. You don't need to tell me.

Q. I am telling you, so there will be no doubt about it. A. Go ahead.

Q. In this hearing, taking your figures of 1946,—the present hearing before the Interstate Commerce Commission,—you have your operating revenue at \$48,184.00, don't you? A. Yes, sir.

Q. And your total cost of operation, \$63,268.00? A. Yes, sir.

Q. When you were a witness before the Board of Railroad Commissioners and were endeavoring to convince the Board of Railroad Commissioners a year ago in 1947 that there shouldn't be any truck operations in this community, I will ask you if you weren't asked, and if you didn't testify as follows:

350 "Q. What was your revenue for 1946? A. \$48,000.00.



Q. What were your operating expenses? A. About \$48,000."

A. That is the difference between the total cost and the operating expenses. This total cost includes taxes, interest and everything else.

Q. But when you testified before the Railroad Commission,—I will withdraw the question. As a result of your appearing before the Montana Board of Railroad Commissioners, and your testimony that this road was able to meet the demands and the public necessity and convenience existed for its continuance, the Board of Railroad Commissioners denied Mr. Aitkens application to run a truck, didn't it?

Mr. Jardine: Have you got the record there,—you have the record, Mr. Loble?

Mr. Loble: Yes.

Mr. Jardine: I wish you would refer specifically to the point in that record where Mr. Atwood testified that public necessity and convenience required the continuation of the operation of the Montana Western Railway. Specifically get that question and answer.

Mr. Loble: I asked him.

Mr. Jardine: You have got the record there. I am not asking you to ask him.

351 Mr. Loble: I will examine him the way I want to. If you,—

Mr. Jardine: We have a right to see what he said. He has the record there, and I ask that it be submitted to him.

Mr. Loble: I will examine him the way I want to.

Mr. Jardine: That is all right, but I ask,—

Mr. Loble: Well, I will examine him, with the permission of the Examiner. If you have any objection to what I am saying, you make it.

Mr. Jardine: I am making it right now: That the witness be permitted to see the statement in that record that Mr. Loble testified as being in there, the statement that Mr. Atwood made at this hearing, that public necessity and convenience required the operation of this railroad; and that is all I ask.

Examiner Bernhard: Hasn't the witness stated whether or not he did so state?

Mr. Loble: He did state that.

Examiner Bernhard: Then I think he should be allowed to see the record?

Mr. Loble: He may see the entire record.

Mr. Jardine: All I am asking is that he be shown that specific thing right now.

Mr. Loble: I am going to examine this witness the way I want, subject to the permission of the Examiner.

352 Mr. Jardine: And I am asking, subject to the permission

of the Examiner, that that record be shown to Mr. Atwood at this time.

Examiner Bernhard: It seems to me it is important to get the exact phraseology in which his testimony was given there. You have had him admit, apparently in one mouthful, that he testified in that hearing that public convenience and necessity did not,—

Mr. Loble: Did not require truck operation.

Examiner Bernhard (continuing:)—did not require the granting of the application.

Mr. Loble: That is right.

Examiner Bernhard: There pending?

Mr. Loble: Yes.

Examiner Bernhard: Now, I think it is only fair to the witness to show him the transcript of that part of the testimony in which,—

Mr. Loble: He can see it all.

Examiner Bernhard: (Continuing:)—where he testified on that subject matter.

Mr. Loble: He can see it all, the entire record.

Mr. Jardine: No; I am not asking to see it all. He made a statement of something that is in there.

Mr. Loble: I asked him whether he testified to it.

Mr. Jardine: I know.

353 Mr. Loble: And he said he did.

Mr. Jardine: I know, but you have it, and I am asking you. I am asking you to point it out to him.

Mr. Loble: He said he did.

Mr. Jardine: I don't think he testified to that on that hearing, and I don't think he did, and I don't think the record will bear it out.

Mr. Loble: Maybe he didn't, but that is what he said he testified to.

Mr. Jardine: That is true, but you read from that record and asked him if he didn't. Now, I,—

Mr. Loble: No; I didn't read from that record. I asked him about the \$48,000.00.

Examiner Bernhard: We will take a fifteen minute recess.

Mr. Jardine: And let him read the record and see if he can find any such statement in the record, his statement, or anybody else's.

(A short recess was taken.)

Examiner Bernhard: The hearing is resumed.

Recross Examination of C. E. Atwood Resumed:

Q. (Mr. Loble:) The hearing referred to is In the Matter of the Application of Bob Aitkens, Williams, Montana, for a certificate of

public convenience and necessity, before the Board of Railroad Commissioners of the State of Montana, Docket M. C. 601. The front page shows the matter came on regularly for public hearing, 354 October 16th, 1947, at Great Falls, before Mr. Casey, the chairman here, and Mr. Leonard Young. Mr. W. W. Wuerthner of the law firm of Murch and Wuerthner of Great Falls represented Mr. Aitken. Protestant: E. K. Mattson of the law firm of Weir, Clift and Bennett, Helena Montana, represented the Great Northern Railway and the Montana Western Railway. You recall that hearing? A. Yes, sir.

Q. Weir, Clift and Bennett are the general counsel for the Great Northern, are they not? A. Yes; they are.

Q. And I noticed during the recess some one of our witnesses was saying Mr. Jardine was appearing in some hearing. He is not general counsel for the Great Northern, is he? A. No.

Q. Local counsel? A. I don't know.

Q. You don't know. A. No.

Q. You appeared by counsel, Mr. Mattson, who is the attorney for the Great Northern, at that hearing? A. Yes, sir.

Q. And you knew at that hearing,—before that hearing, that a man by the name of Aitken had filed an application to secure an M. R. C. to run a truck in competition with your railroad? 355 A. I did.

Q. And you know that in that application he had set forth that public necessity and convenience existed for the operation of a trucking line? A. That is what he said.

Q. Yes; that is what he said. Now, when you went there as a witness you appeared in protest to his application, did you not? A. Yes, sir.

Q. In other words, you were endeavoring by your testimony to establish the position that public necessity and convenience was not present and did not exist for the operation of this truck line; is that right?

Mr. Jardine: Will you read that question, please, Mr. Reporter? (Question read by the Reporter.) A. That would be inferred.

Q. Yes. That is what you went there for, isn't it? A. I went there for the purpose of saving the business for the Montana Western.

Q. And in saving the business of the Montana Western you went there to add what you could in the way of testimony, to see to it that this man did not get a trucking permit? A. That is right.

Q. Because if he got a trucking permit then he would take 356 a certain amount of business from the Montana Western Railway; is that right? A. Right.

Q. And in order to assist counsel for the Great Northern, and yourself, and your company,—

Mr. Jardine: What was the last of that,—“counsel” and who?

Mr. Loble: I said, “Yourself, for the Montana Western,” and himself.

Q. (Mr. Loble; continuing:) You were sworn and testified as a witness, were you not? A. Yes, sir.

Q. And the purpose of your testimony was to establish the things you have heretofore said, that no public necessity and convenience existed for the operation of a truck line? A. That is what it sounds like.

Q. That is right. Well, we are in agreement on one thing, any way, aren't we? A. Yes; we are.

Q. Now, in order to establish that there was no need for a truck line, by your testimony you brought to the attention of the Commission that the public necessity and convenience for transportation was already served by your road? A. Yes, sir.

Q. Yes. And in that connection, in order to establish that  
357 whatever public necessity existed here that your road was serving it, you testified, in addition to other things, as follows on page fifty-four:

“Q. What does your line haul? A. You mean commodities?

Q. We haul wheat, barley, flax, livestock, less than carload shipments of merchandise.

Q. What kind of farming community is it around Valier? A. Dry land and irrigated.

Q. How much irrigated area do you have? A. A project of eighty thousand acres, thirty-six thousand of which is adjacent to Valier.

Q. What products are raised there on the irrigated lands? A. Alfalfa, hay, wheat, oats, rice, barley, flax, mustard seed.

Q. What are the inbound products? A. Groceries, cement, livestock, petroleum products, farm machinery, all less than carload lots.

Q. Is your line equipped to handle all of the commodities you have been requested to transport? A. Yes.

Q. Do you have sufficient equipment to transport all these commodities? A. We have the motive power, and have obtained box cars and things of that sort from the Great Northern.”

358 “Q. But you have sufficient equipment to transport all the commodities requested by you to transport? A. Yes.

Q. And that includes all articles the application has requested to get authority for? A. Yes.”

In other words, when you testified to that you intended for the Commission to understand that your company was fully,—your railroad company was fully capable, able and equipped to meet the public necessity and convenience of transportation, in opposition to the truck line, didn't you? A. Yes.



Examiner Bernhard: Have you had him state he did so testify?

Q. (Mr. Loble, continuing:) And you did testify to these things I have just read, didn't you? A. I did.

Q. Now, I believe you testified today in reference to trucking that now you say that the matter can be taken care of by trucking?

A. I believe so.

Q. There is no difference, is there, between the amount of shipments out of here now than there was in 1947, is there? A. No.

Q. By the way, to clarify a matter for the Examiner, the records here show for 1948, shipments far less than the year of 1947. I will ask you if this isn't a fact: This is an unusual year in this, that the elevators are filled with grain at this time? A. That is right.

Q. And that isn't normally the case, is it? A. No.

Q. By reason of loans that are made by the Government, we have the situation where wheat is piled up in the elevators, and piled up to some extent on the farms, and with an approaching harvest there is a congestion of grain here, is there not? A. Yes; there is.

Q. In other words, when you show here, for instance, in 1948, in your Exhibit 7,—on Exhibit 11, on page three, where you have revenue tons carried, 1947 you have 42,55; in 1948, 25,215, there is a considerable discrepancy between those two years? A. Yes, sir; that is correct.

Q. At first blush, a person looking at that might think that is due to a lack of freight or lack of production,—that is not true, is it? A. No, it isn't.

Q. It is by reason of the things I have just mentioned the congestion? A. That is right.

360 Examiner Bernhard: This testimony you have just given is in further explanation of this note "E" on page thirteen of your return to Questionnaire?

The Witness: That is right.

Examiner Bernhard: Is that correct?

The Witness: That is right.

Examiner Bernhard: The note "E" is connected with the 1948 tonnage of 23,071 relative to products of agriculture?

The Witness: Yes.

Examiner Bernhard: And you noted that that does not include an estimated 14,700 tons held in storage in elevators and on farms?

The Witness: Yes.

Q. (Mr. Loble, continuing:) You said now the trucking can take care of it; in other words, if Mr. Aitken would apply now, in 1948, instead of 1947, your testimony would be different, would it not? A. Yes. Let him have it, and I wouldn't object.

Q. That is because, not so much that you have changed your mind as that there has been a change in the situation by reason of the

Great Northern not advancing the money for operation, isn't it?

A. You might say that is the straw that broke the camel's back.

Q. The same public necessity and convenience exists now  
361 as it did in 1947, doesn't it, for the operation of the road?

There is no difference? A. I hardly agree with that. This car shortage has brought on an illustration of what could be done if the road wasn't here. People hauled their grain to Shelby and Conrad and Pendroy, and they didn't seem to have any trouble.

Q. The necessity of the farmer moving his grain without any cars here has changed your mind as to whether or not he can truck it? A. Well, it has been an illustration of what could be done.

Q. I think you said yesterday that the failure to get cars here by the Great Northern, in your opinion, didn't have any direct relation to this hearing? A. So far as I know, it hasn't; no.

Q. In other words, by reason of the piling up of grain now, and no cars here, and the farmer being obliged some way or other to get his grain out, don't you think that might have some relation to this hearing? A. You mean the car shortage?

Q. Yes. Getting it in here. A. From what I have read and what I have learned at other stations, Pendroy and Shelby and Conrad, it looks as if the whole division is short.

Q. Have you as much shortage now as you did during the war?

A. Yes. Yes.

362 Q. And to what do you attribute that, or are you able to attribute it to anything? A. Well, I would attribute it to the fact the cars were worn out during the war, and they haven't had a chance to replace them as fast as they have been wearing out. There is only three hundred and some odd thousand cars in the United States that are serviceable. With all the commodities the box cars have to handle, a large fruit crop in the southwest, peanuts and cotton and all that stuff, it looks to me as if there isn't enough to go round.

Q. Well, this is an unusual situation? A. It is.

Q. Here in this community? A. That is right.

Q. You have a shortage of cars and an overflow of products?

A. Yes.

Q. If you had a normal filling of the elevators, and a normal outgo of the elevators,— A. (Interposing:) Yes, sir.

Q. (Continuing:) —with a normal amount of cars you would have a different situation, wouldn't you? A. Absolutely.

Q. And that is the situation you generally have, don't you, except the during the war? A. We have had,—we never had a situation like this before that I remember of. We had some  
363 shortage during the war. We had some trouble with equipment that had been abused, but we didn't have a shortage of this nature.

Q. The reason for the pile-up is that the Government loans a certain amount on grain, does it not? A. That is right.

Q. And the farmer can sell that any time he wants, can he not? A. He can.

Q. And heretofore he has been able to sell it at prices above the Government guarantee? A. Yes.

Q. And so he moved it as he saw fit, did he not? A. That is right.

Q. However, because of the price of grain the farmer has been unable to sell it at a higher price is that right? A. That is right.

Q. And so he held it, and on April 30th of this year the Government started to take over grain, didn't it? A. It did.

Q. So that everyone who had grain on hand at the Government's guaranteed price simply turned it over to the Government at that time, April 30th? That is right? A. That is right.

Q. And that was because the farmer didn't have a better place to sell it? A. That is right.

364 Q. So the Government sits here with this grain that it purchased in large quantities, and now has given directions to move it, hasn't it? A. It has.

Q. And so since April 30th, all of a sudden, the Government has called on transportation to move this grain in these large quantities that it has acquired; that is right, isn't it? A. That is right.

Q. And there is difficulty in getting cars to move that? A. Yes.

Q. Just one other,—when you say that on truck transportation,—are you speaking of transportation by the grower of his grain to market? A. What do you mean?

Q. When you talk about trucking being sufficient? A. At the present or in the future?

Q. In the future. A. No, I wouldn't. It is my contention that the farmer would transport all his grain to a more distant market. As I understand it, there is a possibility of the elevators,—the wheat in the elevators being taken from the elevators with trucks and moved to more distant points. That would give the farmer a chance to truck his grain into the elevator as he always has.

365 Q. At what price would this trucking be? A. Well, we had a conversation with a trucker the other day. The prices that he gave us were very similar to the prices we have now on the Montana Western.

Q. You haven't any assurance from a trucker that he will operate for any specific time, have you? A. You mean how long?

Q. Yes. A. No; it is just in the embryo now.

Q. Yes, but I mean if the railroad is out of here, then a trucker who trucks grain isn't required to secure an M. R. C. permit, are you acquainted with that fact? A. If he trucks grain he doesn't need one.

Q. No; in other words, he can truck, or not truck, as he sees fit. You are a public utility, are you not? A. Yes, sir.

Q. That is, the railroad? A. Yes.

Q. And you are required to run; you understand that? A. Oh, yes; we have to transport anything that comes to us.

Q. That is right. A. With the exception of money.

Q. You realize in making your answer, your answer about truckers, that a trucker who trucks grain operates without  
366 an M. R. C.; operates with insurance if he wishes, or not, if he wishes; that is, he is a contract carrier. He will make a contract with you, or not, as he sees fit, or he will carry out the contract, or not carry it out, or renew it, or not renew it, and that you are on a totally different basis than you are with a railroad? A. He can take it or turn it down.

Q. That makes some difference in the operation, doesn't it? A. It makes it tough for the railroad.

Q. So far as stability is concerned of the grower here, and knowing that he is going to get his crop to market, he has a far different situation when he brings it to the elevators here in Valier and knows that the railroad is going to carry it out, whether delayed by lack of box cars or not, that it will eventually carry it out,—he has a better situation than he would have with trucking it? A. I see what you mean; yes.

Q. Now is it a fair statement that along this line of the Montana Western that at least a million bushels of grain are produced a year? A. I would say from eight hundred thousand to a million.

Q. There has been times when it has been,— A. (Interposing:) More than a million.

Q. (Continuing:)—more than a million? A. That is right.

Q. And a million,—as a round figure eight hundred  
367 thousand to a million is a fair figure, is it not? A. That is right.

Q. That is a considerable amount of grain to be moved? A. Quite a lot.

Q. Now, your elevators that are here in Valier are built on the railroad sidings, are they not,—railroad tracks? A. That is right.

Q. And they are built for the purpose of railroad transportation are they not? A. That is right.

Q. Have you an assurance that these elevators would remain here and engage in the storing of grain at all, knowing that a trucking operation would have to follow? A. I have been told that Cargill, Incorporated, would stay here. Other than that I don't know.

Examiner Bernhard: I didn't get the name of that elevator?

The Witness: Cargill, Incorporated.

Examiner Bernhard: It would stay here?



The Witness: Yes; it would stay here.

Q. (Mr. Loble, continuing:) Cargill, Incorporated, is the only one you have heard of? A. That is all I have heard of.

Q. Cargill, Incorporated,—that name is the same name that runs throughout this proceeding, is it not,—Cargill?

368 Q. It is the name of one of the men,—one of the incorporators of ~~the~~ railroad, is it not? A. Yes.

Q. That is the name, is it not? A. Yes, sir.

Q. It is the name of an elevator here; and it is the name of the group Mr. Young, the attorney, is testifying in connection with? A. Yes, sir.

Q. In other words, Cargill, Incorporated, is in an entirely different situation than the Farmers Union, and some of the other outfits, is it not,—the Farmers Union elevator, the Gallatin, the Greeley and the International? A. In what way do you mean?

Q. Well, they are in; the others are out? A. They are into this hearing; yes.

Q. That is right. Well, I think I make it clear. I think I know what I think. I don't know whether you do.

Mr. Loble: I think that is all.

Mr. Booth: Mr. Examiner, I would like to make a statement to clarify the remark or question of Mr. Loble relating to the transportation of grain by trucks: The Motor Carrier Act of Montana, in Section 3847.1, defines motor carriers coming under the Motor Carrier Act, and exempts from the provisions of the Motor Carrier

369 Act motor vehicles used in the carrying of property consisting of ordinary livestock, or agricultural commodities, not including manufactured products thereof, if such vehicles are not used in carrying any other property or passengers for compensation. In other words, under our Motor Carrier Act, if the haul was limited solely to agricultural commodities, not manufactured, or ordinary livestock, they would not come under the Motor Carrier Act. If those same vehicles were used for the purpose of conveying or transporting merchandise, processed feeds, or any other items included in the Act, then they would come under the Motor Carrier Act for all purposes. I just wanted to make that clarification for the record.

Examiner Bernhard: Mr. Atwood, I show you your Return to Questionnaire, page thirteen, and direct your attention to the line relative to products of agriculture?

The Witness: Yes, sir.

Examiner Bernhard: And ask you what percentage of those products move on grain rates shown in Exhibit 14?

The Witness: I wonder if I could get that exhibit?

Examiner Bernhard: Take your time and get it. We are off the record now, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the Record, Mr. Reporter. I asked the witness to tell me, if he can, what proportion; approximately, of the 23,071 tons of products of agriculture shown in his 370 Return to Questionnaire as having moved in 1948, moved at the grain rates.

Mr. Loble: Moved at the grain rates?

Examiner Bernhard: Moved at the grain rates; yes.

The Witness: The total of these products of agriculture is three hundred and ninety carloads; out of that there were fourteen sugar beets, and that gives you ninety-seven per cent, ninety-seven and four-tenths per cent, as grain.

Examiner Bernhard: Which moved at the grain rates?

The Witness: Moved at grain rates; yes, and your remainder was sugar beets.

Mr. Lobel: That is two hundred and ninety— how many cars?

The Witness: Three hundred and ninety cars.

Mr. Lobel: At this point might we observe that the average number of cars over the last ten years moved was approximately seven hundred and fifty cars; is that right?

The Witness: That is right. You see this three hundred and ninety cars was in 1948 when grain didn't move.

Mr. Loble: Seven hundred and fifty cars would be a fair yearly average of the number of cars that moved?

The Witness: That is right.

Examiner Bernhard: You think then the percentage would be about the same?

The Witness: Well, the more cars of grain you have, the 371 higher your percentage would run,—the percentage of grain cars that would be hauled, because the other commodities don't vary,—or haven't for the last few years.

Mr. Loble: Sugar beets?

The Witness: Yes, sugar beets.

Examiner Bernhard: You think they would remain at about fourteen carloads?

The Witness: Yes, from nine to fourteen. Next year there might be more.

Mr. Loble: O. K.

Examiner Bernhard: I just have one more question, Mr. Atwood. You indicated yesterday that possibly the establishment of joint through rates on grain in place of the combination rate, coupled with a division of those joint rates larger than you now get out of the combination rate, might be a solution,—might contribute to the welfare of this road?

The Witness: Yes; it would contribute to it, if we could get enough.

Examiner Bernhard: Has the management of your railroad ever considered giving consideration to the bringing of proceedings before a regulatory body looking to the establishment of joint through rates on grain, and a larger share out of such rates than you now get out of the combination rate?

The Witness: Not that I know of. They might have, and I wouldn't know of it.

372 Examiner Bernhard: You are a director of the company?

The Witness: Yes, but the president takes up matters that I don't know anything about.

Examiner Bernhard: You have no knowledge of any such consideration having been given?

The Witness: No; I haven't.

Examiner Bernhard: Thank you. Are we through with this witness?

Mr. Loble: Yes; I am.

Mr. Jardine: There are some questions on redirect examination:

#### Redirect Examination

Q. (Mr. Jardine:) Mr. Atwood, when you were examined on cross examination you were asked, I think by Mr. Booth, with reference to the backing up of the train,—the possibility of backing up the train instead of using a wye down there, so you wouldn't have to change the direction of the train, and you said that there were certain reasons why it would not be practicable to back up a train. I will ask you if one of the reasons, and one of the reasons you didn't mention, isn't the fact that the condition of the roadbed makes it very dangerous to back up a train? A. That is right.

Q. This condition is entirely different, is it not, from the backing up of a train on the roadbed of the Great Northern where  
373 they have a good roadbed? A. That is right.

Q. And in backing up a train if the engine in backing up runs off the tracks, isn't it a fact that there is a very large expense in putting that train back on the tracks? A. If it is badly derailed, there is.

Q. If it is badly enough derailed is it necessary to call on the Great Northern to help you get it back on? A. It is.

Q. That expense, of course, would have to be borne by the railroad? A. Yes.

Q. Now, as a practical situation, do you think it would be possible to back that train up without the use of a wye? A. I don't think it would be practical; no.

Q. Do you think there would be any saving by trying to hook up the train, or do you think that the additional cost because of

derailments that might occur would probably at least equal, or exceed the cost of doing it otherwise? A. Possibly; yes.

Q. I think you said twelve cars was all you can handle on one trip? A. Yes.

Q. And that is with the steam engine, is it? A. Steam engine.

Q. And,— A. (Interposing:) That is out of Williams.

374 Q. Is that empty cars, or loads? A. No; that is carloads.

Q. Carloads out of Valier,—you never have that many carloads out of Valier, full carloads? A. No.

Q. So really when you talk about full cars,—twelve full cars, it would only be twelve cars out of Valier? A. No; out of Williams. You can't haul that many out of Valier.

Q. Oh, you can't handle that many out of Valier. How many can you haul out of Valier? A. Eight.

Q. Eight from Valier. The reason for that is that you have quite a grade out of Valier? A. That is right.

Q. Until you get over that hump between here and Williams you can only carry eight cars? A. Eight; Yes.

Q. And after you get to Williams you can put on four more? A. Yes.

Q. Coming back in you never have as many as twelve loaded cars? A. No; we wouldn't be able to get up here with twelve  
375 loaded cars.

Q. And have you in the past, say, ten or fifteen years ever had as many as eight loaded freight cars at one time to haul into Valier, as far as you can recall? A. No; no.

Q. Now, if you operated this railroad three times a week, would that necessitate the taking away from you your contract to carry the mail? A. Yes, as I understand it, it would.

Q. You understand that in order to carry the mail you have to operate daily? Except Sunday, is that true? A. Yes; six times a week.

Q. Your understanding is that if you didn't operate daily that contract would have to go to somebody else, or you would have to provide some other means of operating and delivering the mail? A. Yes.

Q. Other than railroad transportation? A. Yes.

Q. And the amount you receive from the delivering of mail, as I recall it, was somewhere in the nature of twenty-eight hundred dollars a year? A. Between twenty eight and twenty-nine hundred.

Q. Now, because of the fact that you do use three and two-tenths  
376 miles of the Great Northern track, it is necessary for certain of your employees to pass examinations, you say, on the Great Northern? A. That is right.



Q. Does that increase, in any way, the cost of these employees to you? A. I cannot say that it does; no.

Q. The employees have to be capable of passing such an examination? A. They should be capable, if they are going to operate trains.

Q. Well, they have to be, don't they? A. They have to be now.

Q. Yes. And do you feel there would be any saving in pay if, for instance, you could employ a man, or men, to transport this train from here to Conrad if the tracks were down,—I mean if the old tracks were in there,—would it be any cheaper to do it that way than it is,—would the cost of operation be any less if you were going right into Conrad,—the cost of operation insofar as hiring men is concerned, if you were going right into Conrad, than it would be under the present cost of operation? A. It would cost more, because we would have to take care of the track into Conrad, and that is a tough piece of track to take care of.

Q. Now, I don't know, but aren't these men,—some of these men that are employed on the railroad, aren't they subject to the  
377 railroad employee's retirement act? A. They all are.

Q. They all are. Are they, or are they not, in any way connected,—I will withdraw that. Will you tell us just in what way they are connected with the railroad employee's retirement act? Is it through your company? A. It is through the government, done through our company.

Q. The company pays a certain amounts? A. We pay six per cent of the payroll, and the employee pays six per cent.

Q. So they are subject to the railroad employee's retirement act? A. Yes.

Q. Now, you did, Mr. Atwood, appear before the Railroad Commission, and I have asked you in this hearing on October 16th, 1947,—and I have asked you to examine this transcript of the testimony to find out if at any place in that transcript you made a statement that public necessity and convenience required the operation of the Montana Western Railway Company, on that hearing, didn't I? A. Yes.

Q. Were you able to find such statement in the record? A. No.

Q. There is no such statement as that in the record, is there?

A. No.

378 Q. When Mr. Loble asked you if you didn't make that statement in that hearing, and held this in his hand, and by inference inferred it was in the record, you assumed that such statement had been made?

Mr. Loble: The inference is that it is in. He says so himself.

Mr. Jardine: No,—

Mr. Loble: Yes; he does. He said that was the purpose of his being there.

Mr. Jardine: That was not the purpose of his being there at all. The purpose of his being there was not to show that; it was to show that public necessity and convenience did not require the operation of the bus line, and that is what the hearing was on.

Mr. Loble: Yes, and the witness testified here that he was trying to establish that this railroad served the public necessity and convenience, and that therefore they didn't need a bus line; isn't that right. I realize,—

Mr. Jardine: I know you realize, and I realize, what happened there.

Mr. Loble: I realize that his testimony is very disappointing to you.

Mr. Jardine: Not to me at all, to you.

Mr. Loble: This man happens to have, after forty years, 379 a genuine affection for this community and this railroad that isn't shared by Wall Street and the rest of them.

Mr. Jardine: Just a minute. If you want to make a speech,—

Mr. Loble: I will make that next November.

Q. (Mr. Jardine, continuing:) Mr. Atwood, at no place in that hearing were you asked whether public necessity and convenience required the operation of this railroad, were you? A. No, sir.

Q. And there is no such question in the record? A. No.

Q. There was a question in the record,—and Mr. Loble tries to make it appear that at that hearing, and contrary to the evidence we have submitted here, you testified that the cost,—the total cost of operation including all costs of operation of the Montana Western Railway Company in that year were \$48,000.00; isn't that so? A. Yes.

Q. Now, as a matter of fact, at that hearing, Mr. Atwood, were you not asked the following question:

"Q. What was your revenue for 1946? A. \$48,000.00."

A. That was in round numbers.

Q. The next question was:

380 "Q. What were your operating expenses?"

And your answer was, "48,000.00." A. That is right.

Q. Is that correct? A. That is correct, for the operating expenses.

Q. That is what you were asked, what the operating expenses were, and that is what you told them? A. The I. C. C. calls that part of the financial set-up operating expenses, that is, before taxes and interest.

Q. Now, you were also asked at that hearing:

"Q. State whether or not there was an operating profit or loss for your line last year."

And you asked the question,—you answered that by asking the question, "In its entirety?" The record also states that Mr. Wuer-

thner, who was attorney for the applicant, objected to that unless he has the figures. Chairman Casey, who was chairman of the meeting, stated, "At this time we will incorporate by reference the annual report of Montana Western Railway Company and the Great Northern Railway Company, and the files of all licensed truckers operating between points mentioned in this application." The annual report of the Montana Western Railway Company would show the total expenses for this railroad for the year 1946, would it not? A. It would.

Q. The annual reports would show the operating costs?

381 A. Yes, sir.

Q. And they would also show taxes, would they not? A. Yes, sir.

Q. And the charge against them for interest on the mortgage?

A. Yes, sir.

Q. And the total expenses? A. That is right.

Q. Which are exactly the same as the expenses which you have submitted here? A. That is right.

Q. So that the testimony that you gave here that the operating expenses were \$48,000.00 was entirely correct? A. That is right.

Q. But it does not show the total expenses of the railroad for the year 1946? A. No.

Q. And,—

Examiner Bernhard: May I ask: Are there any products granted transit privileges on your railroad?

The Witness: No; there aren't.

Q. (Mr. Jardine, continuing:) You at that hearing were testifying in opposition to an application of Mr. Aitken, which application was trying to show the public necessity and convenience of operating a truck into Valier? A. That is right.

382 Q. That was your purpose there? A. Yes.

Q. And your sole purpose; is that true? A. Yes.

Q. Now, Mr. Atwood, something has been said with reference to the shortage of cars, can you tell us if you in your position made any examination of number of cars that come into Conrad relative to the number of cars that have come into Valier? A. Yes; we have gotten half the cars that come into Conrad.

Q. Over how long a period would you say that was? A. About six years,—five or six years.

Q. Over a period of five or six years? A. Yes, sir.

Mr. Jardine: I think that is all.

Mr. Loble: That is all. A. Thank you.

Examiner Bernhard: You may be excused, Mr. Atwood.

(Witness excused.)

Mr. Jardine: Call Mr. Palin.

W. F. PALIN, recalled as a witness, having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Jardine:) You can state your name.

383 Q. You are the same Mr. W. F. Palin who was on the stand the other day? A. I am.

Q. Mr. Palin, I ask you if you examined the books and records of the Montana Western Railway Company to determine the cash position of that company as of March 1st, 1949? A. March 1st, 1949? The cash balance at that time was \$3,268.58.

Q. And do you know approximately what it costs to run that railroad, per month,—I mean just operating costs, not other costs.

A. Just the operating,—

Q. Just approximately. A. About four thousand,—between forty and forty-five thousand,—forty and forty-five hundred, a month, rather.

Q. That is at the present time? A. Yes.

Q. And you did not then on that date have sufficient funds to operate the railroad, if you had received no further funds that month? A. You say, I did not?

Q. Yes. A. No; I did not.

Q. At any rate, since that time has it been necessary, in order to pay actual operating costs, to borrow money to run the rail-  
384 road? A. That is true.

Q. And that money has been advanced to the railroad by whom? A. By The Valier Company.

Q. Has the Great Northern refused, so far as you know, to make any further advances from and after that date,—from and after the 28th of,— A. Yes; they refused to advance us money.

Mr. Jardine: February, 1949,—if you will show that, Mr Reporter.

Q. (Mr. Jardine, continuing:) From that time on they have refused to make further advances? A. From February 28th, 1949, yes, they refused to advance money.

Q. In order to keep this railroad in operation the Valier Company has made advances, and up to the present time how much do they amount to? A. Eighteen hundred dollars.

Q. And at this time the railroad is indebted to The Valier Company for those advances, is it not? A. The entire amount, eighteen hundred dollars.

Q. Now I think there has been certain testimony in the record with reference to the number of cars of grain that moved off the railroad, showing that they probably average around ninety-one  
385 grain there are certain items that are moved into Valier,



including tractors, fuel, lumber, farm machinery, and can you tell us,—have you made any investigation to determine just, in your opinion, as to the percentage of those products that are moved other than by railroad into Valier? A. Yes; I have got a few figures here. In my opinion, there is around about seventy-five to eighty per cent of the gas and tractor fuel is now transported to Valier by truck.

Q. And lumber, about what per cent? A. Lumber, about fifty per cent, or more, is transported to the tributaries of the Montana Western by truck.

Q. Farm machinery? A. About seventy-five per cent of all farm machinery used tributary to the line is either trucked in, or enters the are under its own power.

Examiner Bernhard: You figure seventy-five per cent?

The Witness: About seventy-five per cent.

Q. (Mr. Jardine, continuing:) That is, from making an independent investigation, trying to arrive at an opinion, isn't it? A. That is correct.

Q. Now, Mr. Palin, in your estimation, or in your judgment, or opinion, will available traffic at the present time, or in the foreseeable future, over the Montana Western Railway Company  
386 be sufficient to produce a revenue required to meet the annual expenses of this railway? A. I do not think there is.

Mr. Jardine: I think that is all.

#### Cross Examination

Q. (By Mr. Loble:) You do not know what the situation would be if there were operating economies put into effect, do you? A. No; I do not.

Q. You don't know what the effect would be if some regulatory board should by appropriate hearing require a joint rate for grain, and the Great Northern to make a different division of the revenue? A. In my opinion, the increase, or the share which would have to come off the Great Northern, would have to be quite large, in order to meet the,—overcome the deficit.

Q. You know Mr. McMillan, president of this company? A. Yes, sir.

Q. He is president of the company you work for? A. Yes, sir.

Q. You don't dispute his statement,—and I will read it to you, a part of it,—in which he said over his own signature on June 2nd that: The revenue has been inadequate to keep the Montana Western alive, as freight revenue simply cannot be originated on a fifteen per cent division of freight. Most other similar instances with which  
387 we are familiar give from twenty-five to thirty-three and a third per cent to the originating short line carrier." You

don't dispute that, do you? A. I don't understand what Mr. McMillan means there.

Q. What are you? The secretary of the company? A. Of the,

Q. Of The Valier Company? A. No.

Q. Are you an official of the Valier Company? A. Yes.

Q. He is the president, isn't he? A. Yes. Well, you don't always understand what the president means, do you? A. I don't understand what he means by those remarks.

Q. He says: "With most other similar instances with which he is familiar, twenty-five to thirty-three and a third per cent of the revenue goes to the originating short line carrier." You don't dispute,— A. (Interposing:) He never explained to me. I never asked him, so I don't understand what he means there.

Q. Well, I never saw him in my life, but I can understand what he means. Can't you understand that? A. I don't understand what he means.

Q. All right. Well, do you understand what he means,—the president of your company, when he says, "Among the  
388 alternatives: \* \* "B"—"For the I. C. C. to order the Great Northern to increase its division on freight to one more in line with accepted practice." Can you understand that? A. Those are Mr. McMillan's ideas, and I have never discussed those with him, and I don't know what his intentions are.

Q. Well, you don't dispute his knowledge of the subject he is talking about, do you? A. He should know what he is talking about,—

Q. (Interposing:) Yes. A. (Continuing:)—but I don't just understand what he means there. I have never gone into those matters.

Q. I know you haven't; but all I want to find out is if there is any reason to doubt if the president of your company knows what he is talking about? A. There is things that he does sometimes that I doubt.

Q. You think the wrong man is president, is that it? A. No.

Q. I will take him as president, any way. Now, as a matter of fact, the Great Northern has over a quarter of a century, and particularly from 1933 on, met an average operating deficit of around eighteen thousand dollars of the Montana Western? A. The Montana Western has had an average of that,—an average,—a deficit that has averaged that.

389 Q. Which the Great Northern has paid? A. Which they have paid?

Q. Yes. A. The Great Northern has paid that deficit. They have made advances, and on our books it is charged up against the Montana Western.

Q. Well, to avoid the technical features involved, the Great Northern gave you the money,—loaned you the money, and you

paid the deficit; is that right? A. We paid the operating expenses with that money.

Q. You paid the expenses? A. Yes; we paid the current expenses.

Q. The Great Northern advanced the money? A. They advanced the money, to meet the payrolls, chiefly.

Q. Mr. Atwood has testified that an average,—it was offered in evidence,—the average operating deficit was eighteen thousand dollars, or a little better. The way that operating deficit was met was through advances from the Great Northern; that is right, isn't it? A. We carry over a,—

Q. (Interposing:) Can you answer that yes or no? If you are in dispute with Mr. Atwood I would like to know it. A. May I have that question again?

Mr. Loble: Read him the question, Mr. Reporter, please.

(Pending question was read by the Reporter.) A. No.

390 Q. All right. Now just tell me why it isn't,—why Mr. Atwood isn't correct? A. Included in the eighteen thousand dollars are advances for materials, repairs, labor in fixing up our machinery; ties, and repairs for the road; interest charges on the mortgage; and that is all carried into our profit and loss, and accumulative.

Q. And the eighteen thousand dollar operating deficit is not, according to your statement, an operating deficit alone, but includes interest charges as well; is that right? A. Yes.

Q. How much,—then the actual operating deficit of the Montana Western Railway Company is less than eighteen thousand dollars?

Mr. Jardine: Just a minute. I think the record will show exactly what that is. That exhibit will show just what the operating deficit is.

Mr. Loble: I thought it did, until this gentleman got on the stand.

Mr. Jardine: I think you are confused, rather than the gentleman.

Mr. Loble: That could happen. Maybe he threw me off.

Mr. Jardine: Mr. Atwood testified the operating expenses were eighteen thousand dollars in addition,—

391 Mr. Loble: Maybe he threw me off.

Examiner Bernhard: May we go off the record here a few moments. Maybe we can get that straightened out?

Mr. Loble: Yes.

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record: May the matter on which we got stalled be covered by a later exhibit to be submitted

and prepared by the management, and submitted this afternoon, showing the expenses of the railroad for operations, and excluding the bond interest.

Mr. Jardine: Yes, we will be glad to furnish that.

Examiner Bernhard: For each of the parties?

Mr. Jardine: I don't think it will be much trouble. I think we can get that this afternoon.

Mr. Loble: Will you show it specifically from 1933 to 1948, so we can maintain those same figures?

Mr. Jardine: Yes, we will.

Mr. Loble: Thank you.

Mr. Jardine: We will get it out just as quickly as we can. I think we can have it so it will be in the record. We will try and get it out this afternoon.

Examiner Bernhard: If you close your case before that, we will reopen for that purpose.

Mr. Jardine: Yes.

392 Mr. Loble: I am through with the witness.

Examiner Bernhard: The witness may step aside then, if there is no further examination.

(Witness excused.)

Mr. Jardine: Call Mr. Young.

SUMNER B. YOUNG, recalled as a witness, having been previously sworn, testified as follows:

#### Direct Examination

Q. (By Mr. Jardine:) You can state your name again, please.  
A. Sumner B. Young.

Q. You are the same Mr. Young who was on the stand the other day? A. The very same article.

Q. You are, I think, a director of the Montana Western Railway Company? A. I am not.

Q. You are not a director. You are a director of The Valier Company? A. That is correct.

Q. And have been a director of The Valier Company since when?  
A. Since the ninth day of February, 1945.

Q. And since you have been a director of The Valier Company have you had occasion to examine the monthly reports of the Montana Western Railway? A. Yes. Shortly after I became a  
393 director of the Valier Company Mr. McMillan entered into the practice of sending me the monthly report sheet showing what the operation and other results had been as to the Montana Western for the previous month.

Q. And in checking over those monthly statements, did you after finding out that the statement usually, or often, I should say,



showed a deficit, make any inquiry with reference to that? A. Yes; I did. It seemed to me that the railroad was losing a great deal of money, or failing to make money, you might say, and I did make inquiries about that.

Q. What did you find out? A. I was rather surprised to see how the railroad could operate with a deficit like that, and I found out the Great Northern Railway Company had been making up that deficit by advances of various kinds to Montana Western; and I inquired from Mr. McMillan, the president, as to when it was that the Great Northern Railway Company first undertook to supply Montana Western with the necessary funds to keep itself going.

Q. May I interrupt for just a moment? Before you go on with that,—were you ever able to find any contract or agreement between Montana Western Railway Company and the Great Northern Railway Company? A. I was not.

394 Q. I mean an actual contract, or agreement? A. I was.

Q. Have you searched the files, or had a search of the files made, to try to find that? A. Yes; I have made a search myself, and I found two,—

Q. (Interposing:) With reference to,—

Mr. Loble: Let him go. He almost found something.

Mr. Jardine: That is all right.

Q. (Mr. Jardine, continuing:) With reference to what you found, will you tell us just what you found to substantiate your statement that there was apparently some sort of agreement between,— I don't mean an agreement drawn up in legal form, but some sort of an agreement based on letters that showed the inception of the Great Northern making those advances to Montana Western. Will you tell us what you found with reference to that? A. Well, the first thing I found was this: I found in the files out here at Valier at the end of a whole series of begging letters from the Montana Western to the Great Northern, a letter in reply from the Great Northern Railway, dated November 21st, 1923, and the last sentence of that letter, I think is significant. It says: "In a general way I can say that we expect to see that the Montana Western is taken care of to the extent that it is unable to take care of itself."

395 Q. Just a minute, on that,—you have that letter? A. Yes.

Mr. Jardine: I don't intend to introduce it in evidence, but if Mr. Loble or Mr. Booth wants to see it,—

Q. (Mr. Jardine, continuing:) That is signed by Mr. Kenney, Vice-president of the Great Northern, isn't it? A. No, it seems to be signed by Mr. G. R. Martin, a vice-president.

Mr. Loble: May I examine it?

The Witness: Surely. (Hands paper to Mr. Loble.)

Mr. Loble: I think,—the letter is very short. Have you any objection to the substance going in its entirety?

Mr. Jardine: No; we have no objection.

The Witness: We haven't got two copies of it, though.

Mr. Loble: You could give us one later on.

Examiner Bernhard: Why don't you let the witness read the whole letter into the record?

Mr. Loble: Read the first two paragraphs, and the date of the letter, please. A. This is "November 21st, 1923," and there is a file number, too, if you wish that?

Examiner Bernhard: Yes.

Mr. Loble: What is the file number? A. "452-1,"—I suppose that is a Great Northern Railway Company's file number.  
396 It is addressed to Mr. R. W. Spier, Secretary of the Montana Western Railway Company, Valier, Montana:

"Dear Sir:

"This will acknowledge receipt of yours of the sixteenth instant, for which I think you. The October results are about as I expected.

"While in Great Falls I talked with the local operating officers about car supplies for the Montana Western, and presume the shortage of grain cars has been relieved by this time, but have taken this matter up again.

"I would rather wait until the close of the year before making definite committment about authorizing drafts for deficits. In a general way I can say that we expect to see that the Montana Western is taken care of to the extent that it is unable to take care of itself.

"Very truly yours,

"G. R. MARTIN,  
Vice-president."

Q. (Mr. Jardine, continuing:) Now, did you,—

Mr. Loble: The record shows that is from the Great Northern Railway Company, does it not? A. It is on their letter head, Mr. Loble. I think it is genuine, all right.

Now, the next thing I found was a letter to Mr. J. H. McMillan,—that is the father of John H. McMillan, Jr.—from Mr.  
397 R. W. Spier, here in Valier, and that is dated December 20th, 1937. There is one paragraph of that letter which I think is significant. It reads:

"In January, 1925, after the Great Northern had declined to accept Colonel Stanford's offer of a deed to the Montana Western, the Great Northern agreed to finance the Montana Western for all monthly bills due from the latter to the for-

mer, such as coal, rentals, locomotive and car repairs, et-cetera, these being thereafter carried in open account of instead of being paid in cash as before."

The next paragraph reads as follows:

"The gross of such credit to September 30th, 1937, was \$230,985.10. The payments to the Great Northern from time to time during this period were \$96,506.21, leaving a balance due the Great Northern September 30th, 1937, of \$134,478.89."

Now that paragraph,—that first paragraph I have just quoted from this letter fits in very well with the story that was told to me by John H. McMillan, Jr., as to the fact, that around 1925 Colonel Stanford, who was then the head of the operations out here in Valier, had gone to the Great Northern Railway Company in St. Paul and had offered to deed to the Great Northern Railway Company all of the Montana Western's properties; and it also confirms, and seems to fit in with, the rest of that story, which was as follows: That the result of that interview was that the Great  
398 Northern Railway Company persuaded the Montana Western to carry on under the assurance that they would be taken care of; in other words, that when they couldn't take care of themselves, they would be taken care of by the Great Northern. Now, that is the best I can do in finding anything in documentary form to answer some of the inquiries that were made.

Q. (Mr. Jardine, continuing:) Will you show that letter to Mr. Loble? A. Yes. (Hands document to Mr. Loble.)

Mr. Loble: Did you find that letter of October 16th which he refers to? A. I did not find it, but it might possibly be found. I examined a whole series of begging letters,—as I call them,—and I have some of them in my brief case here. If you wish me to take a quick look to see if I can find that one of the sixteenth, I will be,—

Mr. Loble: If we could find the letter that one is in answer to. That must be the end of the begging series,—it accomplished something. A. Well, may I take a minute to look through them?

Examiner Bernhard: Yes. A. That is October 16th,—I don't find it, Mr. Loble.

Mr. Loble: All right.

Q. (Mr. Jardine, continuing:) Mr. Young, did you enter  
399 into any negotiations with the Great Northern Railway Company along in about August of 1947, with reference to the indebtedness of the Montana Western Railway Company to the Great Northern Railway Company? A. I did.

Q. Will you, in general, give us a summary of those negotiations? A. The first time I had any contact with that subject was in August, 1947. What brought it about was this: On August 1st, Edwin C.

Matthias, the vice-president and general counsel of Great Northern Railway Company, addressed a letter to Mr. John H. McMillan, Jr., suggesting a ten-year renewal of the bond owed to the Great Northern Railway Company by Montana Western Railway Company, the period of extension suggested being September 1st, 1947, to September 1st, 1957. That letter also recommended that Montana Western check up on the matter of the renewal of its corporate existence. Mr. McMillan turned that letter over to me, and I studied the situation,—turned it over in my mind a few days,—then on August 5th, 1947, I wrote Mr. Matthias myself. I told him among other things, in that letter, that I doubted the ability of Montana Western Railway Company, the debtor, to repay the principal and interest, even if the bond were renewed. I also put up a trial balloon in that letter, saying that I thought a realistic reorganization of

400 Montana Western Railway Company would be a better solution than the extension of the bond. Mr. Matthias replied to me by letter on August 6th. He said he supposed the realistic reorganization I had in mind was payment of some part of the indebtedness owed by the railroad to Great Northern in return for surrender and cancellation of the bonds, and he said if I had anything definite he would like to have my ideas, and he would submit them to his people. Well, I didn't have any plan in mind in concrete form at the time I put up that trial balloon, so I wrote back to Mr. Matthias the next day, August 7th, 1947, and I said I had no concrete plan in mind, but that it struck me as being futile to renew the bonds when the debtor had no reasonable chance to pay either principal or interest after the extension, and I said I thought the real trouble was the lack of earning power on the part of the debtor. I also said that I thought cancelling the indebtedness would all be very nice, but unless the earning power of the debtor could be bolstered up in some way, it seems to me that the debtor would go right back into the red and we would be just where we were in the first place.

The next thing that happened was that Mr. Matthias wrote me on August 12th, and I think one paragraph from this letter ought to be read into the record as is,—

Mr. Jardine: I might say here, Mr. Loble, that if you want to examine the correspondence, an opportunity will be given  
401 you to do so.

Mr. Loble: Yes.

Mr. Jardine: I thought it would be shorter to put it in this way.

Mr. Loble: That is all right. A. (Reading:)

“We have at times in the past considered various ways of dealing with the Montana Western situation, but all appeared to have been inherently objectionable. For the present, at



least, a further extension of the maturity of the company's indebtedness appears to be the least objectionable. I shall proceed accordingly, at least, until some other way is suggested which will meet the approval of those concerned."

That is the end of that paragraph. I made no reply to that letter, and on August 22nd, 1947, Mr. Matthias sent me a lengthy outline of proposed procedure for renewing that bond, of extending it for ten years. My recollection of that is that consisted of, counting document and all, of about seventy-five or a hundred typewritten pages.

The next thing that happened that I believe was of significance in this picture was that on September 4th, 1947, Mr. Jardine discovered, and so notified me, that there had been an ineffectual attempt in 1929 and 1930 to renew the corporate existence of Montana Western Railway Company but that attempt, being ineffectual, had failed. On September 4th I notified Mr. Matthias, telling  
402 him about the ineffectual attempt to renew the corporate existence. Well, of course, Mr. Matthias was very anxious that if we renewed the bond that our corporate existence would be an accepted fact at the time we renewed the bond, so the fact this corporate existence had to be fixed up, which, of course, was a matter which would occasion delay, whatever was done. In this same letter of September 4th, I included this paragraph, which I think is significant:

"Furthermore, Mr. John H. McMillan, President of Cargill, Incorporated, and an officer of several other corporations in which the McMillan family is interested, told me yesterday afternoon in the course of a conference that he did not care to commit Montana Western to an agreement to renew the bond at this time. He wishes first to have some talks with Great Northern officials on the whole situation, and also wants to discuss relations with Cargill, Incorporated and Great Northern at the same time."

That is the end of that paragraph.

Now, in the fall of 1947 the Great Northern's engineers made an inspection of Montana Western's entire line of railroad, and as I will tell you a little bit later in chronological order, the result of that inspection was the formation of a rehabilitation program recommended by the Great Northern's engineers to rehabilitate  
403 the line of the Montana Western Railway Company.

Chronologically speaking, the next thing that happened was that on September 15th, 1947, Mr. Matthias wrote me and he said that the bond may be foreclosed if we don't extend. He said also in that same letter he would be glad to talk to Mr. John H. McMillan, Jr., if Mr. McMillan would like to come to see him.

When I heard from Mr. Matthias that they were thinking perhaps of foreclosing, or taking over the Montana Western Railway Company, it seemed to me at that time that would be a happy solution for everybody, and I frankly hoped that he would do it. I thought Mr. McMillan ought to go over and talk with Mr. Matthias, though, and I tried to ask Mr. McMillan to hurry up and go over there and talk with Mr. Matthias because if any other solution was to be discussed it ought to be discussed before the foreclosure took place.

Well, a few days after that, on September 20th, 1947, Mr. McMillan sent me a pencil note which, in effect, boils down to the one word "nuts," because if the Great Northern foreclosed they would have to carry freight from Valier at the same rate as freight originated at Conrad, so he says, "They will never foreclose. There is no hurry." Well, that was the first time I heard that idea advanced, that if they took the railroad they might be under pressure to create a rate structure would result in the Great Northern Railway carrying freight from Valier at the same rate of return as they carried it from Conrad. That was a new one on me.

Any way, there was no hurry evidenced on our part, so the clock rolled around and February 11th, 1948, came up, and on that date Mr. H. J. Seyton, who I believe is presently Chief Engineer of the Great Northern Railway Company, wrote a letter to Mr. Atwood, and that letter set up this eight-year maintenance of way rehabilitation program, and that was the result of the examination of the road bed and rolling stock and everything else of the Montana Western Railway Company that had been started in the fall of 1947. And that program was divided into items of work which were supposed to be done in 1948, and items of work that was supposed to be done in 1949, and so on. And in due course of time the Great Northern Railway Company advanced to Montana Western Railway Company sufficient money to accomplish the 1948 sector of that rehabilitation program; and when I heard that I said to myself that foreclosure, or taking over by deed in lieu of foreclosure, looks pretty certain and very probable. I thought they were rehabilitating this railroad before they took it over.

The next significant date, I think, is February 17th, 1948, when Mr. Jardine accomplished the renewal of the corporate existence of the Montana Western Railway Company. The renewal was forty years from May 2nd, 1929, and at the same time the principal place of business was changed to Valier from Conrad.

I believe the next event of significance occurred on March 1st, 1948, and on that date I wrote Mr. Matthias that it would be John H. McMillan, Jr., who would ultimately decide whether the mortgage should be extended. I advanced my own personal views, saying that I was against extending the mortgage, because

I could see no sense in agreeing to pay something when you know very well you can't pay. I might say, parenthetically, that consideration has weighed very heavily on my mind. I didn't want to see anybody to whom I was giving legal advice enter into a solemn contract to pay something I knew darned well they couldn't pay. I said, among other things, in that letter, and I quote:

"I think the sensible thing to do is to let the Great Northern foreclose this mortgage, if no other alternative presents itself," and then skipping some words I don't think are significant, and taking up the quotation again: "The Montana Western Railway Company cannot possibly earn enough to take care of principal and interest under present conditions, and I can see no prospect that it will be able to so in the future, either."

A few days later I got an answer to that letter. Mr. Matthias wrote me under date of March 6th, 1948, and he said he gathers that we aren't going to extend, and he says, without committing the Great Northern in any way, what do we think about  
406 these two propositions:

"A"—Conveying the line to the Great Northern in satisfaction of the mortgage; and

"B"—Asking permission to abandon the line, the permission being sought from the Interstate Commerce Commission, and then tearing up the line if the Commission would grant it, and applying whatever salvage could be realized on the mortgage indebtedness.

Well, I didn't answer that letter without consulting with my principals, you can just bet. I talked with the McMillan Brothers, and with others interest, and a result of what they said, and what I thought, and so forth, was embodied in a letter dated March 8th, 1948, addressed by me to Mr. Matthias, and I said that Mr. McMillan,—that is John H. McMillan, Jr., concurs with me,—this is not a quote; it is just a summary,—he agrees with me that the Montana Western will be glad to convey the railroad in satisfaction of the mortgage debt; and, furthermore, the Montana Western was ready to do this long ago. I also said that I doubted if abandonment was possible, and that we couldn't commit ourselves to this at this time, and I might say, parenthetically, on that, that was before I had read certain decisions of the Supreme Court of the United States, and I am sorry to say was just a curbstone opinion. The

letter also said that Mr. McMillan had talked with President  
407 Gavin, and I might say also that some time before these talks with President Gavin took place, Mr. McMillan had told me not to pursue any idea of reorganization of Montana Western, or trying to get them to share with us more generously in through traffic; that he, Mr. McMillan, was going to take it up at the highest level, and by that he said he meant he was going to

talk with President Gavin of the Great Northern Railway; so after that I was out so far as any such attempts were concerned.

My letter of March 8th went on to say that the talks had taken place, and also some talks between our senior vice-president, who is in charge of transportation affairs, and two Great Northern men named Hardy and Nicholson. I said in my final paragraph that I thought that Mr. Matthias should check with President Gavin and with these other two gentlemen from the Great Northern as to what was said. I do not know what was said in that conference. I have never been told. I was told this, however, that as far as getting any arrangements with the Great Northern Railway Company which would result in more income to the Montana Western Railway Company by means of a better split on freight rates, that even at the highest level Mr. McMillan didn't get to first base.

On March 15th, 1948, I wrote a letter to Mr. W. F. Palin out here, and this letter reflects my understanding of what the  
408 score was at the time, so I will venture to put it in, at least, a summary of it. I said that I thought the Great Northern was going to take over the Montana Western Railway Company. I repeated that I saw no sense in trying to renew a promise to pay a debt which you know you can't pay; and I reported in accordance with what I had learned from Mr. McMillan that there was no real chance to get a better freight deal out of Great Northern.

On July 28th, 1948, Mr. Matthias wrote me again. His letter was a renewal of an attempt to get the mortgage extended, and the sales talk which he used was as follows: He said that there has been some changes made, or some changes have occurred, since we last took this subject up, and the first of those changes, he said, was that the corporate existence of the Montana Western Railway Company has been taken care of, so that is not an obstacle any more to delay us. Then he says the Great Northern has given Montana Western a cash advance requested by Montana Western to meet current operating expenses; and, third, Montana Western has an eight-year maintenance program which is going to necessitate substantial annual maintenance expenditures. And to this letter he attached a lengthy outline of the extension procedure which he recommended.

Examiner Bernhard: Mr. Young, when you get a stopping point, —do you have a convenient stopping point?

409 The Witness: Yes; I am right now at a convenient stopping point.

Examiner Bernhard: It is now twelve twenty. It will be all right to adjourn until one thirty?

Mr. Loble: Surely.

Mr. Jardine: Yes; it is all right with us.

Examiner Bernhard: We will adjourn at this time until one thirty this afternoon.



(A recess was taken from 12:20 p. m., on Tuesday, July 12th, 1949, until 1:30 p. m., on the same day.)

410 Examiner Bernhard: We will resume the hearing, gentlemen.

Direct Examination of MR YOUNG Resumed: A. Shall I proceed, Mr. Examiner?

Examiner Bernhard: Proceed, if you will. A. (By Mr. Young:) The next letter which I consider of significance is a letter which I wrote to Mr. Matthias on August 2nd, 1948. In this letter I told him that we had not changed our minds about extending the mortgage; in other words, we still did not want to extend that mortgage. I said we had no,—the debtor had no hope of paying the indebtedness. I again suggested that the Great Northern Railway Company take over the Montana Western Railway Company and operate it. I reiterated the fact that the debtor had already indicated its willingness and readiness to convey the property in full satisfaction of the mortgage debt, and I also said that if you don't want the deed you can always foreclose. As to his proposition that abandonment applications be made to the Interstate Commerce Commission, I said that the Great Northern probably knew more about abandonment applications to the I. C. C. than we did, but that I thought the I. C. C. would not favor abandonment. And I want to say, parenthetically here that that was before I had read the decisions of the Supreme Court of the United States.

411 On November 17th, 1948, Mr. Atwood wrote to Mr. Seyton, the chief engineer of the Great Northern Railway Company, —and I ask that special attention be given to this letter, because I think it is rather important. The letter was about the progress made in accomplishing the rehabilitation program up as far as October 1st, 1948. I think the significant paragraph in the letter is as follows, and I am quoting:

“As the flood conditions existing in June of this year prevented the completion of the program prescribed for 1948, it is my presumption that the funds so unused may be added to the money provided for 1949 and used during that year. Is that correct?”

Now, you will see the consequences of this shortly. The reply came in from Seyton to Atwood,—this sounds like baseball, I guess “Seyton to Atwood.—November 27th, 1948. The significant parts of that letter, I think, are as follows, and I am again quoting:

“It is satisfactory, from the standpoint of the Great Northern Operating Department, that you use the money remaining unexpended from the 1948 portion of the work by applying

it to the work to be done in 1949. However, it should be understood by all concerned that approval of the executive officers of the Montana Western will be required before making these expenditures."

412 On December 3rd, 1948, I wrote a memorandum to Mr. McMillan,—that is, John H. McMillan, Jr.,—saying I did not like the looks of that last sentence in Seyton's letter, and by that last sentence I meant the language,—and I quote again:

"However, it should be understood by all concerned that approval of the executive officers of the Montana Western will be required before making these expenditures."

In this memorandum to Mr. McMillan I recommended that we tell Mr. Atwood to reply that he understood that the bonds were not to be renewed; that cash to pay for the renovation work is lacking, and that unless the Great Northern wants the Montana Western to go ahead on the basis that the Great Northern wants the work done, regardless of the above facts, that the officers of the Montana Western think they will sanction no more work. I might say, parenthetically, that it looked to me at the time as the beginning move on the part of the Great Northern to bring home some sort of personal responsibility to the executives of the Montana Western in case they sanctioned that expenditure for that rehabilitation work and then the Montana Western did not pay up.

The next thing that I believe is of significance here occurred on December 6th, 1948. On that date I telegraphed to Mr. W. F. Palin, vice-president and treasurer of the Valier Company as follows, and I quote:

413 "Am recommending to McMillans that Montana Western refrain from spending any more money advanced by Great Northern until latter is told Montana Western cannot repay. Some months ago we declined to renew bonds and have been expecting foreclosure, or request for deed to property in lieu of foreclosure. Regards."

On December 10th I received from Mr. Cargill McMillan, vice-president of The Valier Company, a written memorandum reading as follows, and again I quote:

"I am returning herewith your file in regard to authorizing Montana Western to make certain expenditures.

"John, Jr. and I feel that this is a matter of sufficient importance so that it should be taken up at the executive committee meeting next Tuesday, at which time we can authorize the proper instructions to the officers of the Montana Western Railway Company."

Parentetically, I might say that the executive committee meeting referred to here is a meeting of the executive committee of the board of directors of The Valier Company. It was not a meeting of any group of officers of the railway, The Montana Western Railway Company. Of course, the significance of this situation as far as The Valier Company was concerned is rather easy to understand because they owned all of the capital stock of the Montana Western Railway Company, except the qualifying shares that had been issued to the directors of that company. So they were vitally  
414 concerned in what was going to happen from here on in.

Now, the next thing which I have which I consider of considerable bearing on this case is a letter which I wrote to Mr. Palin under date of December 13th, 1948. I told him that the executive committee meeting referred to was due to be held on the next day, — that was the 14th day of December, 1948. I said that we had made it plain to the Great Northern that we weren't going to renew that mortgage. Then I said, and I quote:

"I have no doubt that the Great Northern expects to take over Montana Western. That is why it has been so free about advancing money to repair the roadbed."

I was there referring to this eight-year rehabilitation program, and to the fact that they had advanced money for the 1948 sector of that rehabilitation plan.

On December 16th, 1948, I wrote Mr. Palin again, and in the meantime I had attended, on the 14th day of December, the meeting of the executive committee. And here is what I told Mr. Palin, in my letter, summarized: In accordance with the decisions of the executive committee of The Valier Company, I am sending Palin herewith a form of letter to write to Mr. Matthias, and the form of letter which I sent to him reviewed the Seyton-Atwood correspondence. It also said that we would not go ahead on the rehabilitation program unless and until the Great Northern recognized in  
415 writing that it wanted Montana Western to go ahead, despite the fact Montana Western wouldn't renew the bonds, and couldn't pay anything for this rehabilitation program, either.

On December 18th, 1948, Mr. Palin wrote the suggested letter to Mr. Matthias. He corrected in that letter, before it went out, a misspelling of Mr. Atwood's name. I think I had him as "H. E. Atwood," and Mr. Atwood's proper initials are "C. E." I think I had better read this letter into the record. The date is "December 18th, 1948" and it is addressed to "Mr. Edwin C. Matthias, Vice-President and General Counsel, Great Northern Railway Company, Law Department, St. Paul 1, Minnesota."

"Dear Mr. Matthias:

"An exchange of letters between C. E. Atwood, General Manager of the Montana Western Railway Company and Mr. H. J. Seyton, Chief Engineer of Great Northern Railway Company, has come to my attention. Mr. Atwood's letter is dated November 17th, 1948, and Mr. Seyton's is dated from St. Paul on November 27th, 1948, and bears your filing number C-4368-01.

416 "Mr. Atwood's letter reported progress on the rehabilitation program of Montana Western to October 1, 1948, and it pointed out that flood conditions in June had prevented the completion of the program prescribed for 1948. It then inquired whether unused funds for the 1948 work might be added to the funds provided for 1949 and used during that latter year. To this Mr. Seyton replied," and then I made an inner quote here:

"It is satisfactory from the standpoint of the Great Northern Operating Department for you to use the money remaining unexpended from the 1948 portion of the work by applying it to the work to be done in 1949. However, it should be understood by all concerned that approval of the executive officers of the Montana Western will be required before making these expenditures."

That is the end of the inner quote. Now, continuing the direct quote:

"You, and your engineering and financial departments have doubtless been familiar with the hopeless financial position of the Montana Western for years. At the time when contributions of money and materials for rehabilitation were made, the advantages of the program from the Great Northern's standpoint were apparent, and the Montana Western's inability to repay was equally obvious.

417 "While the executives of this corporation still are of the opinion that a continuation of the rehabilitation program would be of advantage to Great Northern as the logical next holder of legal title to all of Montana Western's property, either through foreclosure, or by deed in lieu of foreclosure, nevertheless, they are unwilling to allow the corporation to accept any further contributions of cash or materials for rehabilitation work, or to expend unused 1948 balances in 1949, unless and until the situation between the two railways is clarified.

"They wish to remind Great Northern that the Montana Western Railway Company is still unable to repay advances



or contributions of cash or railroad materials for rehabilitation use, and that they do not intend to alter the corporation's decision to decline to renew the outstanding mortgage bond indebtedness due to Great Northern. As earlier communicated to you, as General Counsel, Montana Western is unable to pay either the principal or the interest on those bonds, and has no hope of being able to do so in the future.

"Our executives have decided that our corporation must refuse to go forward on this rehabilitation program unless and until Great Northern Railway Company shall inform Montana Western in writing that it desires us to go ahead, regardless of the above facts and circumstances, and that acceptance of cash or materials for the program will not, in any way, be construed as an implied agreement to renew said mortgage bonds, or to enter into any other arrangements with Great Northern as to payment of indebtedness.

418

"Yours very truly,"

and signed by Mr. Palin as Vice-president.

Now, naturally enough, there was a reply to that letter. On January 21st, 1949, Mr. Edwin C. Matthias, Vice-president and General Counsel of Great Northern Railway Company, wrote to Mr. Palin as follows, and I quote:

"Please refer to your letter to me of December 18th, 1948 in regard to the financial affairs of the Montana Western Railway Company.

"A continuation of the rehabilitation program on the Montana Western is of no particular advantage to the Great Northern. In view of the Montana Western's attitude, as outlined in your letter, Great Northern cannot be expected to advance any further cash or materials to Montana Western in furtherance of its rehabilitation program.

"Very truly yours,"

and signed by Mr. Matthias, and I end the quote.

So that was the cut-off, the first section of about a two or three section cut-off that we got. The first thing that was shut off was further money for the eight-year rehabilitation program.

I think the next thing of significance which happened happened on February 16th, 1948, and that was a letter which Mr. 419 Palin wrote to Mr. J. A. Tauer, the comptroller of the Great Northern Railway Company. This recited that the Montana Western Railway Company's cash position was getting down pretty low, and it said that we were going to run into payroll trouble if we didn't get an advance pretty fairly soon. Mr. Palin wanted to get the Great Northern Railway Company to allow Montana West-

ern to draw on Great Northern for advances in the amount of fifteen hundred dollars semi-monthly for the two months period of March-April, 1949. Now, as to this money, we didn't say we wouldn't repay it. Mr. Palin's words as to repayment expressed in this letter are as follows, and again I quote:

"No draft will be presented unless necessary, and will be used for the purpose stipulated. All advances will be repaid from the first proceeds available, and as our cash balances permit."

Well, before we got an answer to that letter I made an appointment to see Mr. Matthias over at the Law Department of the Great Northern Railway Company in St. Paul, and I went over there on February 28th, 1949, in accordance with that appointment. Again, I offered on behalf of Montana Western Railway Company, to deed to the Great Northern Railway Company all of the property of the Montana Western, and I was refused. Mr. Matthias did not go into detail about why he refused. I do remember he said they 420 couldn't possibly take it. He said if they took it the expense of running it would greatly exceed the amount which we had been paying out to run that same railroad. And that is all he said, as I remember it. He never made any mention about readjustments of rates, or why rates could not be readjusted. The only thing I remember is just as I have spoken of it here. I reiterated our refusal to extend that mortgage indebtedness, and I said that I was afraid of the possibility of personal liability being visited upon the board of directors who caused their corporation, their debtor corporation to extend an indebtedness which they knew very well their corporation had very little chance of paying. Mr. Matthias said, "Well, if you are worried about that, and you will reconsider your decision not to renew, maybe I can get a waiver of personal liability out of the Great Northern." Well, even that didn't sound right to me. So the next thing we discussed was what would happen if there no longer was any railway here,—any Montana Western Railway Company,—

Examiner Bernhard: Mr. Young, what did he mean by "waiver of personal liability?"

The Witness: I was concerned, Mr. Examiner, with the possibility that some stockholder might come in, or somebody,—maybe even the Interstate Commerce Commission come in, and say, "A board of directors which knows its corporation can't pay an indebtedness has no business to renew that indebtedness."

421 Examiner Bernhard: I see.

The Witness: That it is reckless and improvident on the part of those directors to do that. A. (Continuing:) Now, Mr.

Matthias, in talking this thing over, said to me, "If you are worried about that angle of it, as far as the Great Northern is concerned, I will put at rest any possibility that the Great Northern will ever raise that question. I will give you some sort of release." He said, "I can't be sure I can give you that, but I will talk it over with my people and see if they will give such a release. Is that explanation all right?"

Examiner Bernhard: Yes; that is satisfactory. A. So the next thing we got to talking about, as I said, was what would be the situation if the Montana Western Railway Company abandoned its entire line of railway.

Examiner Bernhard: May I interrupt again, Mr. Young?

The Witness: Certainly.

Examiner Bernhard: I didn't get your reply to that proposal that he would consult his superiors as to whether or not he could get that release of personal liability?

The Witness: My recollection, Mr. Examiner, was that at the time that proposal was made to me it didn't sound agreeable. I told him, as I recall it, that I would transmit to the McMillans, John, Jr., and Mr. Cargill McMillan, the information that  
422 there was a possibility that such a release could be obtained from the Great Northern Railway Company, if and when we agreed to extend the mortgage indebtedness, and that is all I remember about it. Mr. Matthias said to me, "I understand that Cargill, Incorporated, has either one or two elevators in Valier?" I said, "Yes, that is true; it has two elevators in Valier." He said, "Have you thought about what you are going to do if there is no railway there?" I said, "Yes, we have, and our traffic department who is rather familiar with the possibilities of handling grain by truck tells us that they believe that we can handle the grain out of those elevators by truck perfectly well." "Well," he said, "how about the land, this irrigated land which the Valier Company owns? I understand you have acquired by foreclosure, or by deed in lieu of foreclosure, quite a few thousand acres of irrigated land out there. What would be the effect on that?" "Well," I said, "as long as the products can move out of these elevators by truck, it is my opinion that nothing very terrible will happen if the railway ceases operations." Then he said to me, "It seems to us here at the Great Northern Railway Company that if the Montana Western Railway Company ceases to exist that we, the Great Northern, are going to get delivered to our line of railway at points other than Valier just about as much grain as we get delivered to us through  
423 the Montana Western Railway Company at this time; that, in other words, the trucks would carry it from Valier and elsewhere down to Conrad and to other points on the Great Northern Railway system," and to that I made absolutely no reply.

When it became apparent that we weren't going to renew, Mr. Matthias told me that a decision had already been reached by the Great Northern Railway Company not to continue to advance funds to the Montana Western Railway Company to operate the Montana Western, in view of our refusal to renew the bonds; and that was the note upon which our interview ended.

On March 1st, 1949, Mr. Tauer wrote to Mr. Palin, vice-president of the Montana Western Railway Company, as follows, and I quote:

"Referring to your letter of February 16, 1949, requesting authority to draw on this company for cash advances to meet your payrolls for months of March and April, "I referred your request to our executive department who advised that no advance of further funds can be made to your company.

"Very truly yours,  
"J. A. Tauer."

Now, this letter went a long ways to confirm what Mr. Matthias had told me orally on the 28th day of February, 1949. However, to make assurance doubly sure, Mr. Matthias wrote me again  
424 on March 2nd, 1949, and I think I had better read this letter into the record. I quote:

"Prior to receipt of your letter of the 28th ult., I discussed the Montana Western's affairs with our executive department, and we concluded that it would be inadvisable for the Great Northern to continue to advance the money to operate the Montana Western. This conclusion was the same that we had previously reached, as I advised you at our conference on Monday.

"We feel that the Montana Western is of no particular value to the Great Northern, and I understand you people feel that it is of no particular value to you. Under those circumstances it would seem there is no justification for a continuation of the Montana Western.

"Very truly yours,  
"Edwin C. Matthias."

I might say that after the interview on February 28th I immediately conferred with my people, and that I wrote to Mr. Matthias as follows, and I quote:

"I have discussed with Mr. John H. McMillan, Jr. and Mr. Austin S. Cargill the suggestion that the Montana Western Railway Company renew the bonds that the Great Northern give to all individuals concerned a release of any possible personal liability, and that the Great Northern continue to absorb the deficit, and to furnish the necessary funds for continuing



425 the Montana Western in operation. The decision reached was to reject that suggestion.

"We think the proper thing to do under the circumstances is to apply for the appointment of a receiver, who, in turn, may later apply to the Interstate Commerce Commission and the Railroad Commission to abandon the road. As a matter of courtesy we will take no final steps in this matter before noon on Wednesday, March 2nd to allow time for further exchanges of views, if you so desire.

"Very truly yours,"

There were no further exchanges of views. And that is the history of the negotiations, as I remember them and as I can refresh my memory from the letters and telegrams exchanged at the time.

Q. (Mr. Jardine, continuing:) Mr. Young, in connection with that you recited, apparently, to Mr. Matthias that Cargills intended to keep their elevators open in Valier, even though the railroad was abandoned? A. I don't think I told them specifically that, Mr. Jardine.

Q. Just what did you tell him? A. I did tell him it was the opinion of our traffic department that the grain could be handled out of those elevators by truck just as well as it could by rail, but in connection with that same thought, I can testify now that it is the intention of Cargill, Incorporated, to keep both of its  
426 elevators in operation, even if this railroad be abandoned, and that it is the intention of Cargill, Incorporated, to move the grain out of those elevators by truck, whether by its own trucks, or by trucks furnished by others, I don't know at this time.

Q. And has Cargill, Incorporated, experience in trucking its own grain? A. Yes, Mr. Jardine, it has.

Q. And knows the relative cost of trucking? A. I can't testify on the relative cost of trucking from my own experience, or from figures that I have, but I do know that Cargill, Incorporated, has extensive trucking operations out of Albany, New York, and grain is delivered in Cargill's own trucks out of Albany, New York, to points all throughout New England states. I believe it is also delivered to points in northern New York and vicinity, but that is a matter for our traffic department, and I have no knowledge at all or no figures with me, as to relative costs.

Q. I think you referred there at one time in your testimony to some letters you had written referring to the possibility of abandonment of the railroad, and that you didn't think the Interstate Commerce Commission would sanction abandonment,—you said something about it being a curbstone opinion. Did you examine further into that? A. I did, and I came across decisions of the Su-  
427 preme Court of the United States that convinced me that

if we could show that we were losing money, and that there were no prospects of altering that situation so that we could break even, that the abandonment would be sanctioned by the Interstate Commerce Commission.

Q. That is contrary to the opinion you had prior to looking it up? A. Yes; that would replace the two curbstoners.

Mr. Jardine: I think that is all.

#### Cross Examination

Q. (By Mr. Loble:) Mr. Young, the Montana Western is a Montana corporation, is it not? A. I believe it is, Mr. Loble.

Q. Are you familiar with the laws of the State of Montana to the effect that there is no personal liability as against a Board of Directors, provided that the corporation on the first day of March of each year files an annual statement? A. I am not familiar with that law, but I know that on March 1st we file certain statement with, I believe, the Secretary of State.

Q. Yes. And having in mind that under our law no matter what the indebtedness might be, or what the financial statement might be, that no Board of Directors is liable for any of the debts of the corporation, or liable for anything other than the stock he  
428 may have subscribed, how do you reconcile that with any thought there would be any personal liability upon any of the executives of the Montana Western Railway Company? A. Mr. Loble, it is the general rule, of course, that the officers and directors are not liable for the debts of the corporation, but it seemed to me that in a case where they caused the debtor corporation to renew a debt, which they knew darned well the debtor corporation could not pay, that would be an exceptional situation and a different rule might apply. That is what was in my mind.

Q. That is a curbstone? A. That is another curbstone.

Q. That is not a curbstone? A. It is another curbstone.

Q. It might go the way of all curbstones then? A. It might, but I have an instinct about that, and I don't think it is to be disregarded, at least not by me.

Q. You may find, as you did before with your curbstone, that when you examine the laws of the State Montana, and the decisions of the State of Montana, you would find that there is no possibility of personal liability,—you might change your opinion? A. Certainly, if confronted by deciding cases I would, of course, change my opinion.

Q. And you didn't have available to you the statutes of  
429 the State of Montana? A. I think we had in our law library at that time the statutes of the State of Montana, but we never got around to reading those in that particular connection.

Q. Did you consult your competent personal counsel here, or your company's counsel,—Montana lawyers, in reference to any personal liability? A. We did not.

Q. As a matter of fact that wasn't one of the great factors involved in this question, was it? A. It was with me; yes.

Q. Would you advise your client on a matter of this serious a nature, and use that as a factor, as a lawyer, without having made inquiry into what the law was as to whether or not there was any liability? A. I did advise them without making such search.

Q. Do you consider that good practice on your part? A. I consider it would have been more desirable if I had gone into the law and the decisions on the cases, but some times you don't have time for that.

Q. Well, to examine the statutes of the State of Montana, or to find out that there was no personal liability when you simply file a statement, wouldn't have taken very long, would it? A. Well, you are assuming now there is no personal liability?

430 Q. I am; yes. A. I don't admit that. I said if I was confronted by decided cases of courts of last resort which said that was the law of Montana, of course, I would change my opinion, but nobody has shown me that is the law of Montana as yet.

Q. Well, no one has shown you? You have never looked, have you? They are there in abundance. A. It is still true that nobody has shown me, whether I have looked or not.

Q. Well, at any rate, you didn't look? A. That is correct.

Q. And not having looked, you won't,—you are not in position to dispute the fact our statute provides, as I say, and our court has upheld that and said that there is no personal liability upon a director where the annual statement has been filed? A. I am not in position to dispute it; no.

Q. All right. Now, just for a moment I am going backwards on this,—it is a little easier: On the trucks you just testified to, you do not know at what rate Cargill expects to use trucks here if this road is abandoned? A. I think they intend to make extensive use of truck hauling; yes.

Q. What will it cost the grain growers? A. That I don't  
431 know.

Q. Will it cost the producer of grain more for Cargill to transport his grain by truck than would now occur by railroad, or do you know? A. I do not know. That I have left to our traffic department, and I understand they know their business fairly well.

Q. I assume so. So far as the farmer is concerned, if this road is gone he no longer has a public utility operated the authority of law that must carry his grain? That is gone when this road is gone?

A. That is, assuming no other public utility takes his place.

Q. Well, we don't have any public utility in this state at this time in reference to trucks that haul grain. A. Of course, I don't know that. You say it; I don't know it.

Q. Yes. Well, we think we know what the Montana law is, as I assume you know the laws of your state? A. Undoubtedly, you know more about Montana law than I do, and I think I know more Minnesota law than you do.

Q. You are welcome to that. Now, so far as the grower is concerned if the road is abandoned, what it is going to cost him to ship his grain, even if Cargill stays open here, is purely speculative at the moment, is it not? A. So far as the grower is concerned?

Q. Yes. A. I don't think it is purely speculative, because I imagine some of these growers have gone around and inquired  
432 from specific truckers.

Q. I am speaking so far as Cargill is concerned? A. Oh, how much Cargill is going to charge the grower?

Q. Yes. A. Well, certainly nobody knows that but Cargill; and I am not too sure they know it yet, either.

Q. And the Great Northern told you after these series of conferences to which I am about to refer, that they figure they would get the grain any way? A. They certainly did.

Q. In other words, what I said a while ago, that so far as the people of Valier are concerned, they are in the bag any way; is that right? A. I don't adopt your expression "in the bag," no. That is your expression; you stick to it.

Q. Where,—you don't mind it, do you? A. Well, it is yours.

Q. I want to share it with you, Mr. Young? A. I don't believe in this share-the-expression business.

Q. Well, you give me a comparable one, and I will take that. A. I think that the Great Northern fully expects, if the Montana Western is out of the picture, that grain will be trucked to other points on the Great Northern Railway system, and that is all I say, and that is all I want to say on that subject.

433 Q. Well, I will not insist that you use a slang expression like that. Now, Mr. Young, the mortgage, the \$165,000.00 mortgage,—that is the one we are talking about, is it not? A. That is the original amount, but Topsy has grown something awful in between.

Q. How big is Topsy now? A. Well, the last I knew Topsy was up to about six hundred and forty grand, to use another slang expression.

Q. Well, I don't like to use that "grand," but Topsy is bigger than that. Topsy was about seven hundred and thirty-five thousand yesterday. She never has grown smaller? A. I will say.

Q. All right. Now, the mortgage that you have reference to, and



are referred to in these letters that you refused to renew,— A. Let me get them for you.

Q. Thank you very much. This is the first time we have gotten along. Thank you, sir. The mortgage started about,—I think the testimony shows,—about the beginning of the operation of this road; did it not? A. Well, I don't recall, Mr. Loble, but I think it dates somewhere around 1909 or 1910.

Q. Yes. A. The record will show it. I don't recall.

Q. Well, we will assume it is then, because I believe it has been testified to here. A. It is in the record.

Q. It started at around \$144,000.00, which had to do with the furnishing of materials and rolling stock by the Great Northern in the beginning of the road, as someone testified to here yesterday, and the mortgage was \$165,000, and it was held,—\$165,000, wasn't it? A. Yes.

Q. And then it has continued at that mount, and then there has been the other amounts advanced. The mortgage was renewed how many times? A. I think there is testimony in the record that it was renewed twice, Mr. Loble.

Q. Now, the last time brought the renewal date up to when,—1947? A. I think it is September 1st, 1947, Mr. Loble. The record will show that, too.

Q. Well, having in mind that September 1st, 1947, the mortgage had expired, and it required that it be renewed in order to give it validity, did you think there was anything unconscionable or unreasonable on the part of the Great Northern to ask for the renewal of the mortgage? A. I thought it was most unusual, Mr. Loble. I couldn't understand why,—and I don't yet understand why,—they wanted to renew that mortgage. Mr. Matthias in his letter to me spoke about consideration being given by various people over there in St. Paul as to what to do about the Montana Western situation, and he told me in that letter, which I read to you, that all the solutions proposed so far had inherent,—I have forgotten what he used there,—“inherently undesirable.” He thought that the renewal of the mortgage would be the least undesirable solution of the thing.

Q. But yet they were willing to take it? A. They were at that time; yes.

Q. And they always were willing to accept a renewal of the mortgage? A. That is right.

Q. The person that wouldn't renew the mortgage was your company at your advice? A. That is correct. And I still say I can't get it out of my crop,—to use another slang expression,—that people ought not to make solemn promises to do something which they know darned well they can't do, and I don't care what the Montana law is on the subject, but for my money that is wrong.

Q. You never lived out in a country where they had mortgages?

A. Yes; we have a lot of mortgages in Minnesota.

Q. In other words, there is more than meets the eye in this, isn't there, in this way: This mortgage had been renewed several times, —probably twice before. The renewal of the mortgage came up at a time when the Great Northern had worked out with you, —  
436 in conjunction with you, a rehabilitation program; that is right, isn't it? A. Who do you mean by "you?" Me, personally?

Q. No; I mean your company. A. No; the proposal first to renew the mortgage came before the rehabilitation program.

Q. Came from whom? A. The proposal came from Mr. Matthias, addressed to Mr. McMillan.

Q. Yes. Now, that proposal to renew it, so far as you know, was no different than it had ever been before, —the proposal to renew the mortgage; that is right? A. Mr. Matthias, —excuse me. Mr. Loble, I had nothing to do with those first two renewals, nothing at all, and I had no knowledge of them at all. My first contact with Montana Western Railway Company affairs originated with that letter that had been written by Mr. Matthias to John, Jr., suggesting a further renewal of ten years be made. I might say this: You speak about something more here than meets the eye. I think there is something more here than meets the eye; and it is perfectly true it is a discouraging sort of a thing to try to run a railroad, we will say, like Montana Western Railway Co., where you have no chance of making a profit, but all you can do is do the best you can, and then have the Great Northern make up the deficit.  
437 That is a discouraging kind of a business proposition to carry on. I think that ought to be brought out. I am sure that figured with me, as well as with the McMillans.

Q. I am not disputing that. A. You asked if there was something more than met the eye, and to be perfectly frank with you, I would say there was.

Q. Of course, I think this is like a poker game. You might have been bluffing, but you didn't have an ace in the hole? A. I wasn't bluffing.

Q. Weren't you? A. No. It may be that they bluffed me, because I thought certain sure they were going to take this railroad.

Q. And the people of Valier, they got in the middle of this controversy? A. Well, that is your expression, not mine.

Q. We each have our own expressions? A. I will say.

Q. Now, how much of a rehabilitation program was proposed by the Great Northern? I think you said there was outlined an eight-year program. Would you mind giving me, not the details of it, but the figures per year of the money that would be put up by the Great

Northern? A. Mr. Loble, may I go to my brief case? I think I have it over there.

Q. You may.

438 Examiner Bernhard: Let's take a three minute recess at this time.

(A short recess was taken.)

Examiner Bernhard: The hearing will resume.

Q. (Mr. Loble, continuing:) Mr. Young, you have in your hand two letters, which I would like to have marked, and to have Mr. Atwood testify about them. They have to do with the rehabilitation program, and I think in talking to the witness privately that he doesn't have as much knowledge as Mr. Atwood does, as to those figures; is that right? A. I have no knowledge at all about it.

Mr. Loble: There are no copies.

Examiner Bernhard: Will you furnish copies later?

Mr. Loble: Yes, Mr. Examiner. A. This second document, Mr. Loble, is not a letter.

Q. (Mr. Loble, continuing:) Take the second document.—

Examiner Bernhard: Just a moment. Let me identify these. The witness is offering for identification,—

The Witness: I am not offering them.

Mr. Loble: I am offering them in connection with my cross examination.

Examiner Bernhard: Counsel is offering for identification a letter on the letter head of the Great Northern Railway Company, dated February 11th, 1948, to C. E. Atwood. This will be  
439 identified as Exhibit No. 18.

(The document referred to was marked Protestant's Exhibit 18, Witness Young, for purposes of identification.)

Examiner Bernhard: Counsel is also offering for identification sheet entitled "Montana Western Maintenance Program." It will be identified as Exhibit No. 19. Both of these are Protestant's exhibits.

(The document referred to was marked Protestant's Exhibit 19, Witness Young, for purposes of identification.)

Mr. Loble: Referring to Exhibits 18 and 19, exhibits which we offer,—no objection, Mr. Jardine?

Mr. Jardine: No; no objection.

Examiner Bernhard: They will be received in evidence as Exhibits Nos. 18 and 19.

(Protestant's Exhibits 18 and 19, Witness Young, heretofore marked for identification, were received in evidence.)

Q. (Mr. Loble, continuing:) I will just refer to them generally, Mr. Young, so far as you are concerned, because the details of them you tell me you are not familiar with. No. 18 is a letter dated February 11th, 1948, from the Great-Northern to Mr. C. E. Atwood, General Manager of the Montana Western? A. That is correct.

Q. And attached to that letter is a sheet that says, "Montana Western—Estimated Cost of Rehabilitation," is there not?

440 A. That is likewise correct.

Q. And in the lower right hand corner the figure of \$171,020.00 is given, is it not? A. That is correct.

Q. And over in the lefthand corner eight years is mentioned? A. Correct.

Q. Now, total 1948 program, opposite are the words, \$27,295.00? A. Correct.

Q. So that subject to what they may say here, those men more familiar with it, insofar as you are able to determine from the exhibits we have, and your information, the eight-year rehabilitation program of the Montana Western proposed by the Great Northern involved a total program with an expenditure of \$171,020.00, of which in the year 1948 the sum of \$27,295.00 was to be expended? A. That is perfectly correct.

Q. Thank you. The other exhibit, Exhibit 19, which is not a letter, is entitled, "Montana Western Maintenance Program," and signed by Mr. Irwin, of the Great Northern. Do you know who he is? A. I don't know.

Q. Feb. 8, 1949, which I would like,—which is in the record, and it is very short, "Total Rehabilitation Program, 8 years, \$171,020. Ties authorized, eight years, \$44,000.00,— A. (Interposing:) I don't think that is dollars, that is,—

441 Q. Ties,—that is ties. A. That is the number of ties; there is no dollar sign there.

Q. 7500 in 1948,—probably ties? A. I think so.

Q. And in 1949, 6,000 in 1950,—and in 1951, I assume that means? A. That is what it would mean to me.

Q. 5,000 in 1952? A. Yes.

Q. 9,000 in 1953,— A. Yes.

Q. —and in 1954 and 1955? A. Yes.

Q. Tie plates authorized, five years, 20,000,—that means the number, I take it? A. I believe that is correct.

Q. 4,000 plates in 1948? A. Correct.

Q. Ballast authorized, eight years, 16,000 cubic yards, 2,000 cubic yards in 1948? A. Correct.

Q. Ditching authorized, eight years, \$12,000.00? A. That is dollars.

Q. That is dollars. \$1,500.00 ditching in 1948? A. Cor-  
442 rect.



Q. Signed "W. B. Irvin, G. N. Ry., Feb. 8, 1948?" A. I don't know whether that is his signature or not, but it is in the same handwriting as all of these items we read.

Q. You haven't any reason to doubt it, have you? A. Not a thing.

Examiner Bernhard: Are you offering this at this time?

Mr. Loble: Yes; I offer both exhibits.

Examiner Bernhard: These exhibits, both 18 and 19, will be received in evidence.

Q. (Mr. Loble, continuing:) The amount of money that the Great Northern sent here for the first year, of 1948, you are not familiar with it? A. I don't know about it at all.

Q. All right. I will pass it. At any rate, from the history you have related, the Great Northern would not,—the Montana Western would not accept the rehabilitation money,—the money for rehabilitation, unless it be understood that the Montana Western did not have to pay for it; is that right? A. Unless it was understood we couldn't pay for it.

Q. Unless it was understood that you couldn't pay for it? A. Yes.

Q. And you weren't going to pay for it? A. We didn't think it was honorable to accept that money if there was any outstanding inference that by accepting that by accepting that money we were going to renew those mortgage bonds. That was one of the considerations.

Examiner Bernhard: Well, did you expect the money as a gift?

The Witness: The situation, as it seemed to me, Mr. Examiner, was this: Mr. Matthias had mentioned to me that unless the mortgage was extended the Great Northern Railway had no recourse left except to foreclose. Then when they immediately began spending large amounts of money on the rehabilitation of the road, I thought that was simply a preliminary to the Great Northern's taking over Montana Western. That is the way I interpreted the facts.

Examiner Bernhard: Well, you still didn't answer my question. Would it be a general obligation, or an outright gift?

The Witness: Well, I suppose it would be going on the books as an advance, but I wanted it understood that we were unable to pay it back, and if they still wanted to have it go on the books as an advance, that they knew darned well we couldn't pay back, all right. Whether you would call that a gift, or what, I don't know. I wouldn't care to label it myself.

Examiner Bernhard: Very well.

Q. (Mr. Loble, continuing:) And so far as the Montana Western was concerned, it didn't accept this money,—Strike that.

444. They did accept it for 1948, didn't they, the money, or do you know? A. I don't know, but if you want me to hazard a guess, I believe that certain funds were advanced, judging from the correspondence I have seen. How much, I don't know. A flood came along in June of 1948 and that put a crimp in the rehabilitation work for 1948. Then there were some 1948 funds unexpended in 1948 that they,—that Mr. Atwood wanted to know whether he could put over in 1949, and that is what triggered this whole thing off.

Q. Yes; in other words, the Great Northern wanted you to, seeing you used part of the money in 1948, said it was all right to take the money that was unused over into 1949, but they wanted the mortgage extended, didn't they? A. No; the language in Mr. Seyton's letter, as I remember it, was that they wished to have no more money spent unless and until the executives of the Montana Western would sanction that expenditure, and I didn't like the looks of that.

Q. In other words, that meant that they were going to insist on you signing this mortgage, didn't it? A. They didn't say that, and I don't know what they meant.

Q. Well, a certain amount of money of the Great Northern did go into rehabilitation in the year 1948, didn't it? A. From the correspondence, I think that is true.

Q. Now, so far as advances for wages were concerned, you 445 said you wouldn't accept any more for your payroll unless it be understood the only place you could repay them from was out of current assets; is that right? A. Let's go back to the letter. I think that is the best evidence of that. Do you know the date of that letter?

Q. I think you said, "pay it out of cash." I think those are the words you use?

Mr. Jardine: I think it was "out of assets."

Mr. Loble: Current cash, I think it was.

Mr. Jardine: Out of revenues, or cash, or something.

Mr. Loble: No; I don't think it was "out of assets." A. I have the letter before me. "No draft will be presented unless necessary, and will be used for the purpose stipulated,"—and the purpose stipulated was payroll,— "All advances will be repaid from the first proceeds available and as our cash balances permit."

Q. In other words, you were telling the Great Northern by that that if they advanced money for the payroll, the only way they would get it back was out of funds such as you described, wasn't it? A. This is not my letter, you remember.

Q. Whose was it? A. This was Mr. Palin's. Now, what he had in his mind I don't know. All I can judge by is the words he used.

Q. Is that the letter you had him write? A. No, sir; I never had him write that letter at all. The one I had him write was the one to Mr. Matthias.

Q. Now, the whole situation there in 1947 was this,—and I think I can sum it all up this way and be through with most of this: A plan by 1947 had been evolved for rehabilitation whereby the Great Northern was to advance approximately \$170,000? A. That is not correct. The plan was not evolved until sometime in February of 1948. The inspection by the Great Northern engineers was in the fall of 1947.

Q. All right. The inspection was made in 1947 by the engineers of the Great Northern to determine all the things they felt ought to be done to this road to put it in shape; is that right? A. As I understand it, that is correct.

Q. And they finally arrived at an amount of \$170,000.00, as indicated by those exhibits,—in round numbers? A. That is correct.

Q. And the Great Northern was willing to advance that amount over an eight-year period, and did advance it for 1948? A. I think they were willing to advance that for an eight-year period, providing we renewed those mortgage bonds?

Q. Yes. A. I don't think they had any idea of putting that amount of money in our lap,—

Q. No; I wouldn't think so. A. And of course, at the time, I thought they were just simply fattening up this road so that it would be in good shape when they took it.

Q. What would be the difference whether you signed the mortgage and they fattened up the road and fixed it up and put in \$170,000.00 and they foreclosed that afterwards than if they did it in the first instance? A. I don't see any difference either way. I think if they wanted to fatten it up first, well and good, or if they wanted to take it lean and fatten it up afterwards, it would still be the same results to the Great Northern Railway Company.

Q. But the reason the program wasn't completed, and the road wasn't put in shape, is because the Montana Western would not renew this mortgage that had been in existence for these many years? A. That is the basic reason, I believe, Mr. Leble.

Q. And your reason for that is you don't feel,—don't think it is honorable to sign a mortgage unless you know where you are going to be able to pay it from? A. That is one of the basic reasons.

Q. Well, these companies, the predecessors of the Valier Company,—were you identified with that company? A. The predecessor of the Valier Company?

Q. With the present Valier Company? A. Yes; I testified to that effect.



Q. They have been through receivership and bankruptcy a number of times, have they not? A. The predecessors have been through, but The Valier Company has not yet gone through.

Q. The only one that hasn't gone through is,—the railroad, the Montana Western has never gone through? A. To my knowledge, it has not.

Q. You gave some consideration to that, didn't you? A. Consideration in what regard, Mr. Loble? I don't understand.

Q. To the reorganization of the railroad through bankruptcy? A. The first thing that struck me when Mr. Matthias' letter came in back there in 1937, that this was a situation which seemed to me to be calling for reorganization, rather than renewal, indebtedness that it was impossible to pay.

Q. In fact, you had in mind a receivership? A. No; not at that time. I did not.

Q. You referred to it in some letters? A. The letter which refers to receivership is the letter which I wrote to Mr. Matthias following my interview with him on February 28th, 1949. I quote from the second paragraph of that letter:

449 "We think the proper thing to do, under the circumstances, is to apply for the appointment of a receiver, who, in turn, may later apply to the Interstate Commerce Commission and the Railroad Commission to abandon the road."

Q. Well, do you think receivership was any less honorable than the renewal of the mortgage? A. Any less honorable?

Q. Yes. A. I didn't have any question of honor in mind at that time. It seemed to me the proper thing to do, under the circumstances, was to have a receiver, and have him, in turn, apply for permission to abandon the road.

Q. In short, you figured that the Great Northern was getting the benefit from the operation of the road, and had been for a long time, and that seeing that they were owed the amount they were, they should take it over? A. I thought the happiest result for everybody, except, perhaps, for the poor Great Northern would be for the Great Northern to take the road and operate it. I wouldn't wish that road on a dog.

Q. You don't mean the Great Northern is lower than that level? A. I don't want to go into that. I don't think I had better.

Q. All right. I think I understand. Just one other question, and that is in reference to the letter of the 20th of December, 1937,—I think we talked about it. From that letter it appears that the,—am I correct in saying from 1924 to 1937 that \$817.00 a month,—

450 if my recollection is right,—is the amount it cost the Great Northern for operating expenses? A. I know nothing about the facts of this case, Mr. Loble,—the matter to which you refer,



but I think you are referring to language in a certain paragraph in this letter, and I would be pleased to read it into the record.

Q. All right. Thank you. A. "The \$96,506.21 was all made in cash, except an item of \$12,542.72, excessive motor bus rental charged to us and allowed in July, 1931, by the Great Northern as a credit against our debt. The \$134,478.89 above during the period of thirteen years nine months average,"—it is a little bit faint here; just a minute. Let me start that last sentence again. I think I have what it means now: "The \$134,478.89 above during the period of thirteen years nine months average \$815.00 per month, or \$9,780.00 per year." Now what that means, I don't know.

Examiner Bernhard: What is the date of that letter?

Mr. Loble: The date of that letter is December 20th, 1947.

Q. (Mr. Loble, continuing:) I take that to mean,—and I don't know whether you do or not,—that for a thirteen year nine months period, it cost,—

Mr. Loble: May I go off the record?

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

451 Examiner Bernhard: Back on the record, Mr. Reporter:

Q. (Mr. Loble, continuing:) The letter that is referred to, December 20th, 1937, is apparently from Mr. Spier,—I think,—who was vice-president of the Montana Western at that time? A. I know there was a Mr. Spier out here, but I don't know what his official position was in connection with the Montana Western. I think he had an office with the predecessor company of The Valier Company at that time, but this was all before my time, and I don't know.

Q. That is addressed to Mr. J. H. McMillan? A. Yes, that is the senior McMillan, who is now dead.

Q. Now this is a letter of December 20th, 1937, which indicates that over a period of thirteen years nine months the Great Northern has expended in operational expenses \$815.00 a month, or \$9,780.00 per year, for and on behalf of this railroad. Does that indicate that to you? A. Well, Mr. Loble, this paragraph is a little bit illiterate. I don't quite get the language to that thing, and I would rather not interpret it.

Q. O. K.

Mr. Loble: I believe that is all.

Examiner Bernhard: Is there any other examination of this witness? If not, you are excused, Mr. Young.

(Witness excused.)

452 Mr. Jardine: Mr. Loble, did you want to recall Mr. Atwood in connection with this rehabilitation program?

Mr. Loble: Yes. May I have Mr. Atwood for one question on the rehabilitation program?

C. E. ATWOOD, recalled as a witness, testified as follows:

Cross examination

Q. By Mr. Loble: Mr. Atwood,—

Mr. Jardine: I don't know whether Mr. Atwood has had a chance to read that lately. I wonder if you would give him a chance to look at it and refer to it?

Mr. Loble: Sure.

Mr. Jardine: Maybe he has,—I don't know.

Q. (Mr. Loble, continuing:) Mr. Atwood, I have shown you Exhibits 18 and 19, which have to do with the rehabilitation program that was being considered by the Great Northern in 1947 and 1948. You have them in front of you, have you not? A. I have.

Q. That rehabilitation program would have corrected many of the things having to do with the railroad, that you have described previously in your testimony, that made the railroad one badly in need of repairs; that is right? A. That is right.

Q. In other words, had this eight-year program, involving \$171,000.00, starting in 1948, been put into effect, it would have, in your opinion, placed this road in a sound condition from a physical  
453 standpoint, would it? A. That is right.

Q. As for 1948, the item there says some twenty-seven thousand dollars, I believe, to be expended, or thereabouts; is that right? A. That is right.

Q. If you will look on the other exhibit,—what is that number?  
A. No. 18.

Q. The letter is what? A. 18.

Q. The figures on there, on No. 18, are those your figures and notations? A. Yes; they are.

Q. They are some figuring that you did in connection with that matter; is that right? A. They were the costs, and I was comparing them with the estimate.

Q. In other words, they don't change the plan any, do they? A. No; they don't.

Q. In other words, instead of using some scratch paper to write on, you made some computations as between the costs and the estimate; is that right? A. That is right.

Q. And you found the costs and the estimate substantially  
454 coincided, did you not? A. Fairly close.

Q. So the notations on there do not change the purport of the exhibit, do they? A. No.

Q. Of the amount mentioned, that \$27,000 and how much? A. For 1948?

Q. Yes. A. \$27,295.00.

Q. Did the Great Northern send advances, either in money or materials, in that amount of money? A. No; no. I bought the ties from them, and I bought the tie plates from them, and there was a carload of gravel. Those three things are the only things I purchased from them, but the advance was made in materials rather than in money.

Q. And the advances went into the road, did they not? A. They did.

Q. The ties and those things you mentioned? A. Yes.

Q. What was the total amount of the rehabilitation program in 1948 that actually was expended in money or construction, approximately, if you can? A. Mr. Young has that in his file, I believe.

Mr. Jardine: You may come and see if you can find it.  
455 A. A letter to Mr. Seyton, setting that forth.

Q. (Mr. Loble, continuing:) That he read here a moment ago? A. No. It was in the same file this was. We put in ties,—5,506 ties, \$15,857.00.

Q. What? A. \$15,857.00; and tie plates, we put in four thousand, at a cost of \$1,312.00. Now, a part of this is gone,—the second page. There was a little earth work and a little gravel. There wasn't much left. That is the bulk.

Q. There is another page of the letter that is gone? A. Yes; it may be over there. Ballast.

Q. Ballast? A. Placed in 1948, one hundred seventy cubic yards, \$339.00; and ditching, expended in 1948, \$473.00.

Q. Yes. A. That is all.

Q. Do you know what those total, Mr. Atwood? A. No. I haven't the total on here.

Q. Of the twenty-seven thousand dollars, \$15,857.00 you got from the Great Northern in ties on the rehabilitation program; \$1312.00 for plates? A. Plates.

Q. Plates you got and put in. A. Mr. Loble, in that is labor.

Q. In this is labor as well. In both of these items is labor?  
456 A. Yes.

Q. The \$339.00 covers what? A. The \$339.00 covers,—

Q. Covers what type of material? A. That is earth.

Q. The \$473.00 covers what? A. \$339.00 is gravel, gravel ballast, and the \$473.00 is ditching, that is, the earth moving.

Q. So when we get these figures added up, taking Mr. Kingsbury's figures for the moment as being correct,—I believe they are,—\$17,981.00, assuming that is the correct figure, of the 1948 rehabilitation program was actually obtained from the Great Northern, either in materials, or money in the payment of labor; is that right? A. That is right.

Q. And, roughly, if the program cost \$27,000.00 for 1948, there was an unexpended balance of ten thousand dollars on 1948? Correct? A. That is right.

Q. And that is when you wrote back and asked them if you could use that ten thousand dollars of 1948's quota of the rehabilitation in 1949, didn't you? A. Yes, sir.

Q. And you had a letter back, as was read here, that you could do so, but the matter would have to have the approval of the executive department of your railroad; is that right? A. That is right.

Mr. Loble: Thank you. That is all.

#### Redirect Examination

Q. (By Mr. Jardine:) Mr. Atwood, in connection with that rehabilitation program, even if it hadn't been called a rehabilitation program, is it true that the items of expenditure that were to be made under that eight-year program were similar to items of expenditure that had been made in the past, for instance, your replacement of ties? A. Yes, the replacement of the ties,—I had figured on seventy-five hundred ties, but I had figured on untreated ties, but when the rehabilitation program came along, why, they specified treated, so I obtained treated ties.

Q. What I am getting at is, Was this \$170,000, this rehabilitation program, over and above expenditures, for instance, you had made for upkeep and maintenance of the road during the past eight years?

A. No, it was a part and parcel of the maintenance, except the gravel ballast.

Q. Except the gravel ballast? A. And the ditching.

Q. And the what? A. The ditching.

458 Q. The ditching? A. The widening of the cuts. The tie plates,—we intended to put tie plates, any way, on the curves.

Q. I think you said at one time you probably would not have put in the treated ties except for the rehabilitation program? A. That is right.

Q. The reason for that being you didn't have in the past money enough to put them in? A. Yes.

Q. So of course instead of untreated ties, under the rehabilitation program treated ties were put in? A. That is right.

Mr. Jardine: That is all.

#### Further Recross Examination

Q. (By Mr. Loble:) I think you said the life of a treated tie, compared with an untreated tie,—is what, in difference? A. Well, an untreated tie will last from seven to eight years; and a treated tie, with tie plates, will last twenty to twenty-five years,—sometimes thirty.



Mr. Loble: Thank you.

Mr. Jardine: I think that is all.

Mr. Loble: Well, Mr. Palin, or someone is going on, before you finish, to explain the difference between the \$18,000.00 actual operating expense between 1933 and 1938, and what it really was. Has that been submitted?

459 Examiner Bernhard: The railroad is preparing a new exhibit which will show the deficits prior to fixed charges,—prior to interest, for each of the year 1933 to 1948. I understand you will introduce that?

Mr. Jardine: Yes, Mr. Atwood has prepared it here, and we have sent it down to the office to have enough copies made.

Mr. Loble: I understood that was coming,—that is coming in?

Mr. Jardine: Yes; I told him I didn't know we would have it before tonight.

Mr. Loble: I see.

Mr. Jardine: We have sent it down for transcription.

Examiner Bernhard: I have a letter here which I wish to explain: As a result of correspondence between Senator Murray and the Chairman of the Interstate Commerce Commission relative to the continuance or postponement of this hearing, and possible proceedings to force the Great Northern Railway Company to increase, or adjust, freight rates as between this railroad and the Great Northern, the Commission's Bureau of Informal Cases undertook to see whether an adjustment could be made with the Great Northern Railroad as to rates without having to institute formal proceedings. As a result of that, on July 8th, 1949, George F. Hardy, General Freight Traffic Manager of the Great Northern addressed a letter to the Secretary of the Interstate Commerce Commission which sets forth the position of the Great Northern, and also

460 in certain exhibits discusses the rates, and divisions of the rates, and other information, as between the two railroads. A copy of that letter, which is signed, and which seems to be, in effect, a duplicate original was sent to me. I received as I was traveling on the Great Northern Railway from Spokane to Conrad. I have distributed copies of this letter to counsel, and I would like to know if anyone has any objection to my introducing this letter in evidence?

Mr. Loble: No; I have no objection. I would like to have accompany it the letter from us, as these two letters are co-related,—the letter of John H. McMillan, Jr., president of The Valier Company to Mr. Wallace Kingsbury on June 2nd, 1949.

Examiner Bernhard: You are going to introduce that yourself, aren't you?

Mr. Loble: I will; yes.

Mr. Jardine: We have no objection.

Examiner Bernhard: There being no objections to the introduction of this document, I will introduce it as Exhibit No. 20.

(The document above referred to was marked Commission's Exhibit No. 20, for the purpose of identification, and was received in evidence.)

461 Examiner Bernhard: It also contains the envelope,—also attached to the letter is the envelope.

Mr. Jardine: We rest.

Mr. Loble: The Protestant, Valier Community Club, at the conclusion of the case of the Applicant, after it has announced it has rested, moves for a dismissal of the application for abandonment, upon the grounds and for the reasons:

First: Upon the grounds heretofore urged by the Montana Board of Railroad Commissioners through its attorney, Mr. Booth, and by the Attorney General of the State of Montana, Mr. Olson, through Assistant Attorney General, L. E. Poppa here representing Mr. Olson, that the I. C. C. is without jurisdiction to determine this controversy, in involving the abandonment of an entire line which has its operation entirely within the State of Montana. All matters in said motion heretofore filed and adopted by this Protestant are urged separately as grounds for dismissal of the application;

Second: That the evidence here offered on behalf of the Applicant is not sufficient to justify the granting of the application for abandonment as set forth in said petition;

Third: That it affirmatively appears herein that to grant the request of the Montana Western Railway for abandonment is unconscionable, and contrary to public policy, in this: That both the Montana Western Railway Company and the Great Northern Rail-

462 way Company are estopped by a course of conduct which they have engaged in for a period of a quarter of century, from 1924, in the operation of this road, and that to permit the Montana Western Railway or the Great Northern to determine the time and the conditions under which they desire to abandon their agreement, and thus abandon the operation of this railroad, is an attempt to invade the province of a regulatory commission, to-wit: The I. C. C., or the Montana Railroad Commission; that is, neither of these railroads had the power or right, without the concurrence of the appropriate regulatory commission, to proceed in a course of conduct of twenty-five years to operate a road beyond the orders of the commission, and then at their own will and discretion abandon the operation;

• Upon the further ground that as to the Montana Western Railway it is urged that the petition be denied because of,—because the abandonment of the railroad under the admitted facts occurs

by reason of the direct and deliberate acts of the Montana Western Railroad itself in connection with the action of its officers and its counsel in refusing to renew a mortgage after having entered upon a rehabilitation program and received a part of the proceeds of a rehabilitation program that was expended in 1948; that it was beyond the power and province of the Montana Western Railway, having in mind the public interests, the people of Valier, Pondera County, and their holdings and interests, for the Montana Western Railroad, and the Great Northern, to jointly bring about a situation whereby the abandonment of a railroad is asked due to the acts of the parties themselves;

That it affirmatively appears from the testimony here that the abandonment of this railroad is proposed at the time least justified in the existence of road; that in 1947 and 1948 it is affirmatively shown that a program was under way whereby rehabilitation of the road would occur, and whereby many of the things testified to would be corrected, but those things were not brought into being by further reason of the action of the roads themselves;

That as to the Great Northern Railroad, which is not a party to this proceeding, but is, nevertheless under the jurisdiction of the Interstate Commerce Commission, that by its own actions over the years in supply the money for the deficits of the Montana Western Railroad did, in effect, create a rate structure of its own, and proceeded for twenty-five years to accept a lessor rate than the prescribed regulatory rate in paying the deficit of the Montana Western Railroad, and in so doing circumvented the regulatory bodies involved, and made its own business deals, its own plans, its own regulations, and its own rates, and that it, and the party to it, the Montana Western, are by reason of their own conduct estopped now from pursuing this application for abandonment.

464 Mr. Booth: Comes now the Board of Railroad Commissioners of the State of Montana and renews its motion to dismiss the application for want of jurisdiction, made at the opening of the case; and further moves to dismiss the present proceedings on the ground and for the reason the case made by the Applicant will not support, or justify, a finding by the Interstate Commerce Commission, insofar as interstate and foreign commerce is concerned, to the effect that public convenience and necessity does not require the continued operation of the Montana Western Railroad. That is all.

Mr. Jardine: Well, in brief, in answer to the motion, the first answer I have is that I don't think the Examiner has any power to dismiss, but as I understand the rules of the Interstate Commerce Commission,

Examiner Bernhard: I have no power to grant these motions. Of course, to do so would completely dispose of the proceedings.

Mr. Jardine: That is right.

Mr. Loble: That is right.

Mr. Jardine: As I understand the rules, you do not have that power?

Examiner Bernhard: That is right.

Mr. Jardine: So that, on that ground without the necessity of stating further grounds, I don't think the motion can be ruled on at this time, because the Examiner is without the authority so to do. In any event,—

465 The Examiner: I will deny both motions.

Mr. Loble: We are making this so as to complete our record, of course. We are familiar, of course, with what counsel says.

The Examiner: Very well. The Protestants may proceed.

Mr. Loble: May the gentlemen from the Utah-Idaho Sugar Company first be called? They are objectors in their own right. Will you come forward, Mr. Ansell?

Mr. Ansell: My name is H. W. Ansell. I will call Mr. Scally to be sworn.

FORD T. SCALLY, was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Ansell:) Please state your name, and your position with the company. A. My name is Ford T. Scalley; I am Montana District Manager of the Utah-Idaho Sugar Company.

Q. Please state your experience. A. I have been engaged in the sugar beet business continuously for the past fifteen years; for the past two years I have been Montana District Manager; prior to that I was Manager of our South Dakota area; and prior to that period I was in charge of the Seed and Labor Departments of the Utah-Idaho Sugar Company in the five states in which we operate, and during which time I traveled through this, and other, 466 areas, to the point that I have become familiar with this area.

Q. Have you prepared a statement of the production and shipments from the Valier area? A. I have.

Mr. Ansell: I submit this as an exhibit.

Mr. Jardine: Is that with reference to sugar beets?

Mr. Ansell: Yes; sugar beets only.

(The document above referred to was marked Protestant's Exhibit 21, Witness Scalley, for the purpose of identification.)

Q. (Mr. Ansell, continuing:) It might be noted that there has been a change in figures. At the time this report was made up we did not have the actual earloading figures in our offices at Chinook.



but these figures have been taken from the Interstate Commerce,—the Board of Railroad Commissioner's reports.

You will note in looking over this information that there has been a considerable up and down in the shipment of sugar beets from this particular area. It is of interest to note during the period of 1938 through 1941, which is the four years following a two-year introductory period of sugar beets into this area, that we had a considerable acreage of sugar beets. Also at this time we were under acreage quotas both as regards sugar beets and grain. It is furthermore of interest when applying the total tonnage shipped from Valier for instance, in 1940, that the sugar beet tonnage represented just about an even forty per cent of the total tonnage shipped out of Valier on the Montana Western railway. As we came into the war years we suffered severely in this particular area with a shortage of hand labor. Any form of row crop farming demands considerably more hand labor, or more labor, that is demanded in the farming of grains or roughages, and because of this reason, plus the fact that with Government support of grain, sugar beets did not become quite as desirable to grow, and as a result the acreage fell off, and fell off to nothing in the years of 1946 and 1947. We placed a young man with very fine training and experience in Pondera County a year ago in order to bring the sugar beets back into the picture, and we had a very decided increase in acreage, only to be confronted by a year where we would probably have done better if we had planted rice. It just literally rained us out. However, we did harvest a portion of that acreage which is recorded in the report as from Valier, as fourteen carloads, or 479 tons of sugar beets.

Q. What is your acreage for 1949? A. Our acreage is approximately the same in 1949 as it was in 1948.

Mr. Jardine: May I interrupt just to ask a question to clear this up? You are talking about the acreage in the Valier area?

A. Yes.

468 Mr. Jardine: I just wanted to know.

Q. (Mr. Ansell, continuing:) Mr. Scalley, how about the improvement in the use of mechanical devices, and so on? Is that likely to make the growing of beets easier in the future? A. It very definitely will. In the past three years the harvesting of sugar beets has gone from a point where three years ago we harvested roughly twenty percent of the sugar beets without hand labor, to the point where we are practically one hundred per cent mechanized for fall harvest. Last year eighty-five per cent of the beets that were harvested were harvested by machines. We did not import outside labor into the areas for the harvesting of sugar beets. The small amount of local labor that was available took care of this. We have also gone a considerable distance in mechanizing the

spring work. At this period of the year, however, we are not presented with any unusual difficulty in having the work done, given a normal season, in view of the fact that there are many areas in this country that are known as areas of labor surplus, these areas being principally in the Southwest and in California, and at that period of the year, roughly, from April through July, there is not sufficient work in those areas for the people to make a livelihood, and there is a mass migration out of those areas into the Northern sugar beet areas to take care of these crops. That labor 469 comes in freely and are very desirous of having the work.

Q. Has there been some change in the type of beet seed you use to make the thinning of beets easier? A. We have during the war years come to a use of a processed sugar beet seed. A sugar beet seed is a multilocular seed; in other words, it is actually a cluster of seeds, and from one given seed as many as from two to five plants may germinate. In the past six years we have developed sizing and processing methods to the point that we have eliminated these large seed balls that produce a great many plants in one place and require labor to hand finger. The percentage of single plants has been increased tremendously.

Q. And that has reduced the labor considerably? A. It has definitely reduced the amount of labor necessary to take care of a crop of sugar beets.

Q. Does the growing of sugar beets contribute to enlargement of the livestock industry? A. It very definitely has a profound effect on the feeding,—on the flattening of livestock. One needs only to look into the published reports of the Bureau of Agricultural Statistics to know that eighty-five per cent of all livestock fattened in the state of Montana is fattened in sugar beet areas. This is also true in the other sugar beet growing states. The by-products from a crop of sugar beets are considered by many growers to be as great in value as the value of the root crop itself.

470 Q. By the same token that then should lead to increased revenue for the railroad, would it not? A. It very definitely would.

Mr. Jardine: Did you use the term "dividends," or do you mean revenue?

Mr. Ansell: Revenue.

A. I note in going through our reports on feeding, and after inquiring was the past year or two, I do not think I am wrong in testifying to the fact there has been little, very little, or no, fattening of livestock that has gone on in this area in the past few years. In 1938 our records indicate that there were 5,990 lambs fattened in this area, and 1,321 cattle. This was two years after sugar beets were introduced into this area. By 1943 there were 13,000,—in excess of thirteen thousand lambs, and 2,300 cattle fattened. Now,

that would,—thirteen thousand lambs would be roughly about six  
five carloads of lambs, plus the cattle, so that it very definitely  
would produce additional railroad revenue. There has been one  
change that has been made in our operations in the past years that  
has definitely had an effect on those areas where sugar beets are  
grown away from the processing plant at Chinook. Prior to 1947  
it was not economically feasible for the grower of sugar beets to  
471 truck wet sugar beet pulp into the outside areas. It contains  
approximately,— or contained approximately ninety per  
cent moisture, and as a result this valuable by-product was  
fed in its entirety in the close proximity of the processing plant. In  
the year of 1947 there was installed at the Chinook processing plant  
of the Utah-Idaho Sugar Company a pulp drier, the process being  
one of drying, or removing the moisture, from the plant tissue that  
remains after the sugar has been extracted, and adding to that  
twenty-five per cent molasses. This produces a feed that is valued  
very highly throughout this country and Europe, and any other  
country where sugar beets are grown. We, as a company, give our  
growers first rights. Ripe molasses beet pulp is a feed that is  
equivalent to grain feed and in a fattening ration can replace half of  
the grain ration.

One other feature that we have made available to our outside grow-  
ers is delivery of pulp. We recognize the fact that grower here in  
Valier is at a considerable distance from the factory at Chinook.  
We deliver the pulp to that grower at the station he delivers his beets  
to us. In other words, the grower of sugar beets in any particular  
area in our company buys pulp at the same price as the man  
buys it adjacent to the factory at Chinook. Where there has not  
been pulp fed in our west and areas a year ago, we shipped in ex-  
cess, I think, of fifteen carloads into,—fifteen carloads of dry pulp  
into the Great Falls area. There was one carload came into Conrad.

This has made available one of the valuable by-products  
472 of sugar beet farming to the sugar beet growers in this  
area that they have never had before.

Q. Mr. Scalley, is there anything in the National Farm Pro-  
gram which might affect crop acreages in the future? A. I would  
say yes, and the main reason that I would say that is that the only  
thing that we can base our future plans on are our experiences of  
the past. As I pointed out, the years in which the acreage was high  
in this area was the years of the quotas, and everything that  
the Secretary of Agriculture has announced up to the present  
time, there seems to be no question but what grain quotas will be  
announced. If the pattern follows as it followed in the past, a major  
proportion of this grain wheat cut will come from the irrigated  
farms. In addition to that cut the price factor itself has changed

considerably. We have noted a growing demand for sugar beets in practically all of the areas in which we operate. I can certainly assure anyone concerned we do not make a practice of placing high-priced field men in an area with the thought that he will continue to stay there for an acreage such as exists in Valier at the present time. The mere fact that we have this field man in this area should be good proof that we definitely feel that there will be a considerable increase in acreage.

Q. To sum up, in your Exhibit 21 you show that the largest acreage planted was 1521. Is there any reason to doubt 473 you? A. There should be absolutely no question as to the availability of that much acreage. We normally consider in many of the areas in which we operate and in our own farming operations, which are of considerable extent, that we can under good farming practices have twenty-five per cent of the acreage in sugar beets, and fifteen hundred acres is but a mighty tiny fraction of the irrigable acreage that is available in this area.

Q. And that would mean an average, say, of fifteen thousand tons of beets which would ultimately reach the great Northern Railway at Chinook,— the Chinook factory, would it not? A. It would.

Mr. Ansell: I think that is all the questions I have.

Examiner Bernhard: Is there any cross examination?

Mr. Jardine: Yes.

#### Cross Examination

Q. (By Mr. Jardine:) The available acreage for sugar beets you consider as twenty-five per cent of the irrigable acreage? A. That is assuming, Mr. Jardine, that it is land that is suitable for row crop farming. I realize there is a considerable proportion of the acreage around here that is of such a nature that it probably should be retained in permanent pasture. However, fifteen hundred acres, I would say would be a very small fraction of the 474 ground that would be suitable for sugar beets.

Q. And your field man is located where now? A. At Conrad.

Q. And you have an experimental farm down there? A. We do; yes.

Q. Where is That? A. At Manson,—one mile north of Manson.

Q. And you also endeavor to have growers, or have endeavored to have growers raise sugar beets in the Conrad area, have you not? A. We do; yes.

Q. And there are quite a lot more beets raised there, are there not, than in the Valier area now? A. There are right now, that is true.

Q. And probably fifty thousand out of the seventy thousand,— I would say forty-five thousand out of the seventy thousand acres



of irrigable land on the Valier project is closer to Conrad than it is to Valier, isn't it? A. There is quite a portion of it. I don't,—

Q. You don't know the percentage? A. I don't know that percentage.

Q. They do haul beets from the area in the vicinity of Conrad into Conrad, don't they? A. They do.

Q. And do you know how far they haul the beets,—what  
475 is the farthest haul of beets? Or approximately so, from that area into the town of Conrad? A. I would say,—I would say that possibly the beets from our farm would be about as far away as any of them.

Q. That is just a few miles? A. I would say that would be probably seven or eight miles,—is that right? We are one mile north of Manson.

Q. One mile straight north of Manson? A. Yes.

Q. I suppose it would be somewhere in that neighborhood. A. Yes.

Q. Then you don't have any beets up on the north bench out of Conrad? A. There has been nothing there for the past year or two.

Q. Are there any beets raised in the area east of Conrad there on what they call the Pondera,— A. (Interposing:) Yes; there are. Those are delivered into Conrad.

Q. I think the system extends about ten miles east of Conrad? A. Yes.

Q. Do you know if there are any beets raised that far east? A. No; not to the extreme extremities this year. We don't have beets there.

Q. Do you know in the past whether beets have been hauled as far as fifteen or twenty miles into Conrad? Do you know  
476 know of your own knowledge? A. I don't know. No; I don't.

Q. Now, in estimating the question of whether or not there would be sugar beets raised in this area in the future, you base that somewhat on the ground that you expect restrictions to be placed on the grain acreage, particularly with reference to irrigated land? A. That is one factor that can very definitely affect the situation.

Q. Now, with reference to the hauling of sugar beets over the Montana Western Railway from Valier,—with reference to the hauling of sugar beets over the Montana Western from Valier to the town of Conrad, the exhibit introduced by the Examiner,—I think it is No. 20,—shows for the year ending May 31st, 1949, there were fourteen cars hauled out of here, and I think that is what the 1948 records would be, but this,—I am just calling your attention to the fact that this is up to May 31st, so it would include the year prior to that, while your year, I think, is the calendar year

of 1948,—I am not trying in any way to confuse you in reference to that,—A. That is right.

Q. But I am calling to your attention with reference to this exhibit, and I will hand you the exhibit,—on page four of the exhibit is shown the revenue of carload traffic on which no through rates are published,—applying rates to representative average rates,—and this, I take it, is upon shipments originating at Valier,—and it shows on the first column the word “sugar beets,”—you find that there? A. That is right.

Q. It shows fourteen cars originating, it shows the rate at 51, with a star in front of it which says, “rate in cents per ton,” which I take it would be,— A. Fifty-one cents per ton.

Q. And then the average weight of the cars and the total revenue of \$292.74 for the hauling of the fourteen cars? A. That is right.

Q. Now, the rate on sugar beets apparently is a great deal lower than the rate on grain, is it not? A. On the basis of weight per tonnage, it possibly would be.

Q. Your rate on grain is 8.84 cents per hundred, as I get it,—per hundred pounds? That is the rate on wheat, and to get that per ton, will you give me the figures, Mr. Atwood? The rate on wheat per ton?

Mr. C. E. Atwood: \$1.76 or \$1.77.

Q. (Mr. Jardine, continuing:) Unless his figures are wrong, it is \$1.77 per ton on wheat, and barley, apparently from the same figures,—your sugar beets are fifty-one cents,—or about three times or more,—three and one-half times under the rate of pay, or revenue, derived by the Montana Western for shipping sugar beets from Valier to Conrad. That A. Yes.

478 Q. Now, if the cost of operating, for instance an eight-car train originating in Valier down to Conrad, if the cost of operating that train was in excess of \$275.00, and the revenue derived from it was,—I will withdraw that. This shows fourteen cars shipped and the total revenue received from the fourteen cars with freight of \$292.74, which I think would probably be about twenty-one dollars a car,—is that figure right? A. Yes; that would be twenty-one dollars.

Q. And eight cars at twenty-one dollars a car would be \$168.00. If the cost of operating that train was in the neighborhood of,—was in excess of three hundred dollars, there wouldn't be much profit for the railroad in operating a train to carry sugar beets from Valier to Conrad? A. That would be assuming they had a full pull of grain cars. The mere fact that sufficient gondolas or battleships are made available for the movement of sugar beets is actually a gift of rolling stock in addition to what they would nor-

inally have if they were just hauling grain. They are limited to the cars they might be allotted.

Q. In other words, if they were hauling five cars of grain they could just as well put on three cars of sugar beets? We will admit that. A. Yes.

479 Q. But the actual transportation of sugar beets by trainload transportation would show a loss, assuming the figures I gave you were correct? A. Yes. The only thing I wanted to mention was that we never seemed to run into but a very small amount of grain loading competition. When we are loading beets, at that particular time of year there doesn't seem to be a very small grain movement.

Q. You load beets at what time of the year? A. From the last week in September through the first week in November.

Q. And in this area you say you don't run into grain loading at that particular time? A. We load as many as twelve carloads of beets at many stations throughout our system with no complications?

Q. In other words, the loads would practically all be beet loads, would they not? A. Yes, the major part,—as a matter of fact that is about actually what happens. Sometimes they will accumulate a trainload of beets in the Shelby yards and pull them down.

Q. But if they accumulated them in Valier and pulled them down you would have a train load of beets out of Valier? A. That is right.

Q. Of course, the more beets the Montana Western hauls at a loss of a hundred or a hundred and twenty-five dollars a load, it would depreciate their revenues to that extent? A. It would, unless you figure they weren't going to pull anything on the days they didn't pull beets. There seems to be a considerable amount of deadheading where you are just operating with one crop.

Q. They would have that in any event, of course, and of course what they got out of sugar beets would be just that much additional revenue? A. I would assume so; yes, sir.

Q. The growing of sugar beets in this area apparently reached its peak from along about 1938, according to your figures there,—from about 1938 to 1942, inclusive? A. Yes, sir.

Q. 1938 being the largest year, and the other years averaging probably around eleven hundred acres plant up until 1942,—something in that neighborhood? A. That is right.

Q. Then with the years of 1943 to 1948, inclusive, the acreage has dropped down to, with the exception of the year 1944 when it was three hundred and twenty acres, to under three hundred acres a year? A. That is right; yes, sir.

Q. Last year you,—I will withdraw that question. Last year were there many beets rained out in this Valier area? A. Yes.

Q. Do you know how many acres had been planted to beets  
481 in the Valier area, prior to the flood? A. We planted,—  
that shows on this report, in the first column,—one hundred  
and fifty-six acres, of which there was harvested sixty-eight acres. It  
shows a rather severe abandonment.

Q. The difference would be the abandonment? A. Yes.

Q. Labor is still necessary, isn't it, in thinning the beets? A.  
Yes; it is.

Q. You say that labor would come from the Southwest into this  
area? A. Yes; we have some facilities in the form of an em-  
ployment office ourselves in the Southwest; and we direct labor to  
this particular area in such amounts as they are needed, and I  
might add we just literally had to shut the flood off this spring.  
We had the situation of the Rio Grande Valley freezing out, plus  
the heavy influx of wet-backs across from Mexico, and the problem  
was to try and keep them in the Southwest until we needed them,  
rather than—

Q. Now, with reference to the using of sugar beets for feed, and  
the shipping of livestock in and out of the community, the live-  
stock that use the pulp of the sugar beets for feed, I don't suppose  
you know anything about the,—I will withdraw that form of ques-  
tion. Do you know anything about, for instance, the trans-  
482 portation of cattle out of this community, whether it is done  
practically wholly by truck, or whether the Montana Western  
is used? A. I know in the testimony there was livestock shipped  
out, and I would judge that would probably be feeder stock. There  
are certain flocks of ewes in this general vicinity, as well as a cer-  
tain amount of calf crop raised here, and I would assume the major  
of that was shipped out as feeders.

Q. I am referring to cattle at this time. In this year ending 1949  
I don't find that there has been any cattle shipped out,—or any  
ending May 31st, 1949. I don't know prior to that,—have you got  
that record there? A. I wouldn't know. In any event, I would have  
no idea of how the stock moved out of here.

Mr. Jardine: I think that is all.

Mr. Loble: One question:

#### Cross Examination

Q. (By Mr. Loble:) State whether or not, in your opinion, pub-  
lic necessity and convenience requires the continuation of this  
railroad? A. I could answer that question as regards the par-  
ticular effect it would have on the business with which I am asso-  
ciated.



Q. Yes; that is what I am talking about. A. I would say in all probability it would relieve us of any opportunity of securing acreage in this area.

Q. In other words, you take the railroad out of here and that is the death knell of the beet business here, isn't it? A. I would say that that is very probable.

Q. The beet top is used for feed, is it not? A. It is.

Q. It is fed on the farm or branch, is it not, for one place? A. It is. Among men who have used them it is generally considered to have practically an equal value of an acre of barley.

Q. You take your livestock in the fall, carry them through the winter feeding them beet tops and ship that livestock in the spring often, do you not? A. They do that often. It is not uncommon,—the common practice in a lamb feeding operation, or with cattle, is to bring the feeders directly from the cars when they come into the area, put them on tops mainly in the form of pasturing. They will pasture their tops off, and cream off, or top off a sizable portion of them as fat stock and move those directly in. In other words, they will get a fat price for stock that has never seen a feed lot.

Q. So that, from the standpoint of, for instance, sheep and lambs, they move by rail, do they not? A. They most assuredly do in practically,—or I would say in all the areas with which I am personally acquainted in this district. I know they go out by rail out of Milk River.

Q. While cattle are often shipped by truck in small quantities, you cannot ship sheep or lambs in large quantities except by rail, can you? A. They can ship them in sizable quantities. That has been the general experience, however, from most of the feeders I have talked to, that they experience a little more shrink in trucks than they do by putting their lambs on decks where they have regular stopping places.

Q. Where you are feeding beet tops the railroad gets the benefit of shipping in the sheep or lambs you are going to feed, for one thing, do they not? A. They generally,—a large part of them come in on rail, and all of them, or a major part of them, go out on rail. Some are driven in that are raised in the vicinity of where they are fed.

Q. In other words, to get it quickly, your beet crop that you ship out of here that Mr. Jardine referred to is shipped in Gondola cars? A. That is right.

Q. That is a far different process than shipping out wheat or grain which has to have protection in a box car? A. I would say yes.

Q. This beet crop that you ship out of here goes to Chinook, which is on the Great Northern; is that right? A. Yes.

Q. So the railroad out of here gets a benefit out of it,

the Great Northern gets the benefit of it, and then after the beet is changed and converted in your plant into sugar, the Great Northern gets another advantage in hauling out the sugar; is that right? A. That is right.

Q. Now, on your livestock, particularly lambs, they are shipped in and shipped out over the rails in connecting with feeding, are they not? A. They are.

Q. So that if the handling,—while your rate is lower on the handling of beets, the cost of handling beets in a gondola car, or shipment of beets, isn't anything like the handling of wheat, is it, or grain? A. I have never had any experience in shipping grain. I have had considerable experience in shipping beets.

Q. Now, so far as this area is concerned, as point out, we had beets at the top where they had fifteen hundred acres, or more? A. Yes.

Q. And then it came down? A. Yes, sir.

Q. Agriculture and stockraising runs in cycles, does it not? A. It sometimes does; it shouldn't. It should be constant.

486 Q. In other words, when a man thinks he can make a lot of money raising cattle, everyone raises cattle? A. Very often a war time period will bring about a break in the normal cropping procedures.

Q. And if everyone thinks they can make more money raising grain they are going to raise grain? A. That is true.

Q. And then when the grain market gets bad, and a fellow has to get out and scratch again, he starts raising,—diversifies his crops and raises a smaller quantity of grain, raises some beets, and feeds a few cattle; is that right? A. That is very often true; yes, sir.

Mr. Loble: O. K. That is all I have.

#### Redirect Examination

Q. (By Mr. Ansell:) In the loading of sugar beets, the sugar company provides the loading facilities, does it not? A. They load everything, and they bill everything out.

Q. And the cars move with a pretty large capacity load? A. They do. We are very zealous of filling them to the utmost capacity, because we normally aren't too long on cars.

Q. And there is no loss or damage to the product when it moves? A. None.

Mr. Ansell: That is all.

Mr. Loble: One further question, please:

#### 487 Recross Examination

Q. (By Mr. Loble:) The fertility of irrigated farms is improved by manure products, is it not? A. Very definitely.

Q. It is an important factor? A. That is axiomatic in farming.

Q. You recommend the growing of beets, don't you? A. I most assuredly do.

Mr. Loble: That is all.

Mr. Jardine: I have one more question I would like to ask in connection with something brought out on cross examination.

### Recross Examination

Q. (By Mr. Jardine:) You said in answer to a question by Mr. Loble, I believe, that if the Montana Western was abandoned it would relieve your company of your opportunity of raising beets in this area. You mean the Valier area, do you? A. I do. In the area adjacent to the town of Valier, and the area encompassed in this project that I would say that is beyond,—on this side of half-way between here and the town of Conrad.

Q. If the crop was grown at least half-way between here and Conrad, the natural place to take it would be to Conrad, rather than here? A. If it were on the other side of half-way, they  
488 wouldn't have the choice; we would write the contract. We would hardly want them to back haul and then pay fifty-one cents to get them over to Conrad.

Q. That is what I am getting at. Anything at least half-way from here to Conrad would go into Conrad? A. That is very true.

Q. You couldn't prevent them from hauling from here if they wanted to? A. No.

Q. Now, in your experience, have you had any experience in,—other than in the Valier area, of them trucking beets for any distance? Do you know of other places where they truck beets any distance, and if so, what is the approximate maximum? A. Yes. I have seen instances where they have trucked a considerable distance, but in those particular instances we were forced to pay what we term "long-haul allowances," and sugar beets were desirable to the point that men actually hauled them.

Q. In other words, you contributed instead of the Montana Western contributing? A. That is right.

Q. How far would you say that haul would run? A. We would be willing, for instance,—we would not hesitate to pay the freight from here to Conrad, but I would doubt any man hauling too far on the outside of the half way mark between here and Conrad would care to haul clean over to Conrad, for fifty-one cents.

489 Q. Maybe I didn't make myself clear. What I meant was, you said that in some other areas they hauled quite a distance to the railroad, and I wondered,—"quite a distance," could mean one block or it could mean a hundred miles, of course. I just wondered about that. A. I have seen twenty-five mile hauls.

Q. About twenty-five miles? A. Yes.

Mr. Jardine: That is all.

Further Redirect Examination

Q. (By Mr. Ansell:) That twenty-five miles, though, is generally direct to the sugar factory, is it not? A. It is direct to the sugar factory, and it is generally direct on a hard-surfaced highway. The only actual spot I can think of is a haul from Mud Lake to Blaho Falls, in Idaho, which is quite a long haul. However, it is direct into the factory, and they are,—they don't have too much choice of crops.

Q. There would not be any railroad haul in connection with it?

A. No.

Mr. Ansell: I think that is all.

Mr. Loble: That is all.

Mr. Jardine: That is all.

490 Examiner Bernhard: We will take a ten minute recess at this time.

Mr. Ansell: Before we recess could I have this paper admitted in evidence?

Mr. Jardine: We have no objection.

Mr. Ansell: It may be received in evidence as Exhibit No. 21.

(Protestant's Exhibit No. 21, Witness Scalley, heretofore marked for identification, was received in evidence.)

Examiner Bernhard: We will have a ten minute recess.

(A short recess was taken.)

Examiner Bernhard: We will resume the hearing.

Mr. Ansell: I will be sworn as a witness, Mr. Examiner.

H. W. ANSELL, having been duly sworn as a witness, testified as follows:

Direct Examination

The Witness: My name is H. W. Ansell; I am General Traffic Manager of the Utah-Idaho Sugar Company, with headquarters in Salt Lake City, Utah. We operate nine sugar factories in the states of Utah, Idaho, Montana, South Dakota and Washington, the factory in this state being at Chinook, Montana, located on the Great Northern Railway twenty-one miles east of Havre. The successful operation of a sugar factory depends upon having sufficient sugar beets to run the plant to maximum capacity, and, therefore,  
491 we need badly some more beets in the Valier area, and are willing to pay the higher freight rates that we are called upon to pay.

If this Montana Western Railway should be abandoned, we feel it would mean the end of our operations here, because from past



experience we have found that farmers will not haul the distance that would be involved in this case. And another reason is that the weather in this part of the country is such that there is occasionally interference during the harvesting season, and the farmer's time is very limited within which to perform the hauling, because you may have bad weather even,—any time after the end of October. When you ask the farmer to haul a round trip of approximately forty miles from the Valier area to Conrad, which would be the nearest beetloading facility, he would not have time to do so. And, furthermore, all we could offer would be the railroad rate from Valier to Conrad, which is fifty-one cents a ton. In view of this we feel that the farmer would not be able to grow beets in the Valier area.

Now, prior to the war, up to fifteen thousand tons of beets were grown here, as testified to by the preceding witness, Mr. Sealley, and we hope, with a return to normal conditions, that a similar production could be obtained, which would go far towards securing maximum capacity operation at the Chinook factory. As with any other business, maximum capacity reduces the overhead 492 cost per unit of production.

We are, therefore, hoping that something can be done to keep the Montana Western line in operation, even though it might be on a tri-weekly basis.

Now, while it is true the amount of revenue which the Montana Western Railway obtains from the movement of sugar beets is rather small, yet the freight revenue which would accrue to the Great Northern for handling the beets from Conrad to Chinook, and the collateral freight traffic resulting therefrom, would be substantial, and we feel the Great Northern is just as much a party to this proceedings as the Montana Western.

Therefore, we have prepared an exhibit which we would like to have identified,—and which I have passed around. It is entitled "Statement Showing Freight-Revenue Resulting from Movement of Sugar Beets from Valier, Montana, on the Montana Western Railway." May that be marked as Exhibit No. 22?

Examiner Bernhard: It may be numbered Exhibit No. 22.

(The document referred to was marked Protestant's Exhibit 22, Witness Ansell, for the purposes of identification.)

Examiner Bernhard: Are there any objections to receiving the document in evidence at this time?

493 Mr. Jardine: We object to any evidence with reference to any rates so far as the Great Northern is concerned. Other than that, so far as the Montana Western Railway Company is concerned, we have no objection,—on the ground that it is incompetent and irrelevant.

Mr. Ansell: Mr. Examiner,—

Mr. Booth: It is the Protestants' view in showing the rate on sugar beets, the total benefit to be derived from the standpoint of the carriers, the standpoint of the community, and from the standpoint of the sugar beet company, are all material, and should all be considered at the same time, and in the same connection. While it is true this does show revenues to the Great Northern, that is a part of the picture in order to determine the possible benefits in raising sugar beets, to the Valier community, and we urge that it is material, and that it should be received in its entirety.

Mr. Ansell: I will say, Mr. Examiner, when we negotiated for the rates on sugar beets to Chinook, Montana, we conducted those negotiations with the Great Northern Railway, and they arranged the rate both on the Montana Western and on the Great Northern; so in view of that I think it is something that should go into the record.

Examiner Bernhard: In view of this explanation, the Railway is not likely to be prejudiced much by this extra data you  
494 object to, is it?

Mr. Jardine: Yes. I just made the general objection that it is incompetent, irrelevant and immaterial so far as this proceeding is concerned.

Examiner Bernhard: I think I will admit it as Exhibit No. 22.

(Protestant's Exhibit No. 22, Witness Ansell, heretofore marked for identification, was admitted in evidence.)

The Witness: In this exhibit we show freight revenue resulting from the movement of a carload of sugar beets of forty tons, which is about the average since we started shipping from Valier, and, of course, as shown at the top, at a rate of fifty-one cents, it produces freight revenue to the Montana Western of \$20.40 per car. However, if we take that same carload and see what happens when it is moved from Conrad to the sugar factory at Chinook, an interesting development results. You notice I have divided the commodities into outbound and inbound. First is the sugar beets from Conrad to Chinook which produces \$50.80 per ton to the Great Northern Railroad. Then there are the other things necessary to process the beets into sugar and by-products: Lime rock, fuel oil, coke, bags, miscellaneous materials, and fertilizers which are used by the farmers, all of which totals up to \$92.54 per car. Then on the outbound, from a carload of sugar beets we produce 10,800 pounds of sugar, which, shipped to the Twin Cities, would result in another item  
495 of \$79.92; the dried beet pulp, as far as the Twin Cities, would be \$30.50; and the molasses would be \$21.12, or a total for the outbound of \$131.54, a total to the Great Northern of \$224.08,

which, added to the Montana Western revenue, would produce a total of \$244.48.

Now, on the bottom on the left hand side we show what would happen if the production of sugar beets should become the same as it has been in the past at Valier, and you notice for fifteen thousand tons, or three hundred and seventy-five carloads, a total revenue that would be received by the Montana Western and the Great Northern would equal \$91,680.00.

Now, in view of that we earnestly advocate that some arrangement be made for the continued operation of the Montana Western Railway, either as at present, or to be operated by the Great Northern Railway. We feel that this is only in accordance with what has been done in other places. In one case, I. C. C., 79 I. C. C. 121, and 82 I. C. C. 301, the Commission held that when a line has been in use for many years and furnishes the only railroad service in the territory, further operation may be justified though it has sustained deficits, and though it would not be justified as an initial enterprise. We particularly call attention to the fact that the Great Northern is the only connection for the Montana Western, and in view of the earnings which they receive from the long haul traffic, not only on sugar beets, but on other commodities handled here, that the Montana Western is of much value to the Great Northern as a feeder line which would warrant its continued operation, and we trust that this can be done.

That is all.

Mr. Jardine: What was that citation you have there?

Mr. Loble: Do you have a copy of your statement?

Mr. Ansell: Well, I have followed it only in general.

Mr. Loble: Do you have a copy,—an extra copy of that,—we could have for that citation.

Mr. Ansell: I have the citations here, if you want them. Do you want one, too, Mr. Jardine?

Mr. Jardine: I asked if you have the references you gave there?

Mr. Loble: Is the citation in this?

Mr. Ansell: Yes; I just used No. 4 there. I only used one of them.

Mr. Jardine: May I keep this?

Mr. Ansell: Yes, but the understanding is that I didn't follow that language.

Mr. Jardine: No. I understand.

Mr. Ansell: That is all.

Examiner Bernhard: I would like to ask Mr. Ansell to explain certain computations he made yesterday on which certain testimony here was based. I would like to clarify his method of computation and show us the exhibits and figures he used.

The Witness: Well, I took the Proponent's Exhibit No. 11, page three, and in connection therewith I used the proportional rate of

eight and one-half cents on grain which the Montana Western obtains for hauling *sugar* from Valier to Conrad.

Examiner Bernhard: That is on Exhibit 14?

The Witness: No; that is on some other exhibit.

Mr. Loble: Exhibit 11.

The Witness (Continuing): But the eight and one-half cents was generally admitted as being the proportional rate on grain, and fifty-eight cents was the rate from Conrad to Minneapolis, making a total rate of sixty-six and one-half cents, as the through joint rate. That represents 12.8 per cent; that is, the eight and one-half cents represents 12.8 per cent of the through combination rate of sixty-six and one-half cents. On page three of complainant's Exhibit No. 11,—

Examiner Bernhard: That is, 12.8 is the Montana Western's percentage of that through combination rate?

The Witness: Yes, sir.

Examiner Bernhard: O. K.

The Witness: On page three of Exhibit No. 11, at the bottom of the page, it shows that average increase in rates that would have been required to overcome deficit, .029 cents, or two and nine-tenths cents. Now, I added that two and nine-tenths cents to the eight and a half cents, which is the Montana Western's portion of the rate, which produced 11.4 cents, and by dividing the through combination rate of sixty-six and one-half cents, which we assume would become the through rate, into the 11.4 cents, it shows the divisions to make that come out right would be 17.14 per cent. However, based on,—I might say,—Strike that please, Mr. Reporter. Of course that figure that I used was based on the average of all the commodities that had been shipped to obtain this .029 per hundred weight, and I believe the question originally was, What would be necessary for the divisions to be raised on grain to take care of this deficit of \$18,672.10 per year? So, to make that correction, I took the total amount shows on this page three, product of agriculture, which, I understand, is practically all grain, 442,592 tons, and the average for sixteen years is 27,662 tons,—

Examiner Bernhard: How much?

The Witness: 27,662 tons, and by that being converted into hundredweight, I get 553,240 hundredweight, whereas, on Exhibit 11, page three, they showed 632,324 hundredweight.

Examiner Bernhard: That 632,324 represents the total tonnage carried?

499 The Witness: Yes. So that change, of course, means that based on grain only you should add 3.38 cents per hundred weight, to the 8.5 cents proportional rate, producing 11.88 cents, as being what the Montana Western should have as their divisions to take care of this deficit.



Examiner Bernhard: You are assuming that is \$18,672.10?

The Witness: For the average; yes, sir.

Examiner Bernhard: For the average.

The Witness: Then dividing the six-six and one-half cent rate into this 11.88 would produce for divisions as 17.86 per cent.

Examiner Bernhard: I didn't get that last step.

The Witness: The sixty-six and one-half cents is the through rate, and dividing that into 11.8 cents would be what the Montana Western would have to receive, and that produces 17.86 per cent as the division.

Examiner Bernhard: You may cross examine.

Mr. Loble: I just want to ask about one thing:

### Cross Examination

Q. (By Mr. Loble:) So that if the deficit is \$18,000.00, as is indicated, the average deficit, the Montana Western would need 17.8 of the combined rate to meet the deficit; is that right? A.

That is right, based on the rate from here to the Twin Cities.

500 Q. The only difference you have now in your computation is the difference between 17.4 and 17.8, as to what you gave before? A. 17.14.

Q. 17.14? A. Yes.

Q. Now if, however, the deficit is shown by subsequent figures to be offered here by the complainant, and the operating deficit is only nine thousand dollars a year instead of eighteen thousand, then your figures would be proportionately reduced would they not?

A. That is right.

Mr. Loble: Thank you.

### Cross Examination

Q. (By Mr. Jardine:) Well, of course, the deficit,—the average deficit as shown by the figures,—I am not talking about the operating cost; I am talking about the total cost. The railroad owes \$165,000 first mortgage bonds on which it owes, I think, about ninety-nine hundred dollars a year interest,—the eighteen thousand some odd dollars shown as the total deficit,—average deficit, over a period of from 1933 to 1948, includes that, and your figures based on eighteen thousand odd dollars here, show that in order to raise

501 that deficit it would take an increase in this rate so that we would get 17.86 per cent of the total combined rate; isn't that true? A. That is right.

Q. Of course, if the Great Northern isn't entitled to any interest on its money, that is a different thing. A. I believe some of that figure has got to be corrected, based on the figures to be presented.

Q. Now you said you were called on to pay a high freight rate.

Are you called upon to pay a high freight rate between Valier and Conrad? A. No; I was explaining my exhibit relating to the sugar beets moving to Chinook factory.

Q. I thought that is what you meant. A. Taking the two things together, you know, it comes to \$1.78, which we consider a high freight rate.

Q. What do you consider the freight rate from Valier to Conrad to be,—high or low,—on your sugar beets? A. It is higher than we normally pay for twenty miles, but realizing the conditions here, fifty-one cents is all right.

Q. Do you have any other operations where you operate over a branch line and pay less than fifty-one cents? A. Where the branch line belongs to the main railroads, and operated by them, like the Union Pacific, and the Northern Pacific, or the Great Northern itself, then the usual rate for twenty miles is forty cents, which has been increased, though, fifteen per cent, so as to make that 50¢ about forty-six cents.

Q. Have you had any experience with any branch lines that are operated separate and apart from other railroads? A. No, sir.

Q. You have had no experience with them? A. No, sir.

Mr. Jardine: I think that is all.

Mr. Loble: That is all.

#### Cross Examination

Q. (By Mr. Booth:) Mr. Ansell, your testimony shows that the total rate on sugar beets is \$1.78 from Valier to Chinook? A. Yes, sir.

Q. Now I think you stated previously that you requested a rate from the Great Northern, and that the rate given to you was obtained all the way through from Valier to Chinook by the Great Northern? A. That is right.

Q. That rate, if I have computed it correctly, shows that 28.3 per cent of the rate goes to the Montana Western, and the balance would go to the Great Northern, wouldn't it? A. Yes; that is about right.

Q. So that the Great Northern has been willing to increase its division of rates on some commodities over what they are at the present time on grain? A. Yes; I think they took distance into consideration in this.

Q. Now, going to distance, as I figure the distance, and I figured it from the time table only, it is 158 miles from Conrad to Shelby,—from Conrad to Chinook by way of Shelby? A. Correct.

Q. And that figures as 12.65 per cent of the total distance, the total distance from Valier to Conrad, and the balance from Conrad to Shelby? A. That is right.

Mr. Booth: That is all.

Mr. Jardine: That is all.

Examiner Bernhard: You may be excused.

(Witness excused:)

Mr. Loble: Call Mr. N. A. Peterson.

N. A. PETERSON, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) State your name, please. A. N. A. Peterson.

Q. And you live where? A. At Valier.

Q. In what business are you engaged, Mr. Peterson? A. Farming and ranching.

504 Q. You have lived in this community how long? A. Right at thirty-three years.

Q. What is the extent of your operation? A. You mean,—

Q. Your farm operations? A. Well, I have been farming the last number of years about,—close to a thousand acres a year.

Q. Mr. Peterson, you are the representative from this county in the legislature of the state of Montana? A. Yes, sir.

Q. And you are the speaker of the house of representatives pro tem, are you not? A. That is right.

Q. And you occupy that position at the present time? A. Yes, sir.

Q. Mr. Peterson, state whether or not, in your opinion, public necessity and convenience requires the operation of the Montana Western Railway? A. Definitely so.

Q. What effect, do you believe, will be imposed upon this community and this part of this county, or what result, should this railroad be abandoned? A. Well, it would have a very detrimental effect on the values of property in this area, and it would impose a burden on those who live west of here to get to an outlet, a rail outlet. Of course the further you get east, the closer you get  
505 to the main line of the Great Northern. That handicap is to some extent overcome by going toward the main line.

Q. What do you do with your grain? A. Oh, ninety per cent of it comes into Valier here.

Q. Where do you place it? In one of the elevators here? A. Yes.

Q. And for you what would be the effect if as a result of the abandonment of the railroad the elevators were not here? A. Well, we would have to make up our mind to haul it anywhere from seventeen to twenty-five miles, where we have now about a seven and a half mile haul.

Q. You do have a good deal of hauling from the combine, as we say, to the elevator, do you not? A. Yes; provided we can get into the elevator.

Q. In other words, as you are harvesting you haul a certain amount in to the elevator, do you not? A. As much as we can.

Q. The present conditions, as described here, for 1948 show there is an unusual condition that exists here now in reference to the glutting of the elevators with grain, is that right? A. That is right.

Q. At the present time the elevators are filled, and because of the conditions that have been described here before, are they  
506 not? A. Yes, sir.

Q. And with the approaching crop it is an unusual, and hazardous, condition that exists here? A. Yes, it is, in general.

Q. Has there been a shortage of cars here? A. Well, I think there has been. We have to hold our grain, oh, from probably two to two and a half months beyond the period when the Government was supposed to take over, because of the car shortage.

Q. The Government took over on April 30th, did they not? A. I believe so.

Q. And that has worked a hardship and a difficulty here that is unusual, is it not? A. Well, it depends on how you take that. On the purchase agreement grain there was no chance to get any money on that until you delivered it to market; on the loan grain, we got the money when the loan was completed.

Q. Explain to the Examiner what the practical effect of that is in reference to shipment. In other words, on a certain type of grain you couldn't get paid until you delivered it at the elevator; is that right? A. That is right; yes.

Q. And you couldn't deliver it to the elevator, because the elevator was full, is that right? A. That is right.

507 Q. And that is one of the troubles now, isn't it? A. Yes.

Q. And the elevators are full because there aren't cars available to take the grain out? A. At least they weren't available here.

Q. Have you any knowledge of whether or not cars are available in great number elsewhere than here? A. Just last week we had a chance to move, oh, some four or five thousand bushels of grain at Pendroy, and we didn't have a chance to get it in here.

Q. Pendroy is a town that has both the Great Northern and the Milwaukee, is that right? A. No; just the Great Northern.

Q. Just the Great Northern; But the Milwaukee is nearby? A. Probably seven or eight miles away.

Q. What is the name of the town? A. Agawam.

Q. In that locality you have two competitive railroads, do you not? A. Yes.

Q. If you had two competitive railroads here you might have a different situation? A. Well, I hope we can find out.



Q. What have you to say as to cars being available at  
508 Pendroy in a greater number than here? A. Why are they?

Q. Yes. A. I imagine competition would be the answer to that.

Q. It is true they are available in greater number at Pendroy, and have been? A. Yes, I think,—at the request of our Railroad Committee I looked up the cars that were available in Pendroy during May and June, and I think I gave the information to the committee. Probably Mr. Kingsbury has it.

Q. You are a member of the Valier Community Club, are you not? A. Yes, sir.

Q. That organization is a civic organization and it has many active committees, does it not? A. Yes, sir.

Q. You speak of the Railroad Committee, that is the Railroad Committee of the Valier Community Club, is it not? A. Well, I will explain that in this way: We have a number of standing committees, and this railroad thing was more or less of an emergency, and probably what you might call an emergency committee was set up to take care of this emergency.

Q. Yes. I read from a Valier Community Club letter head,—it has officers, a president, a vice-president, secretary, treasurer, board of five directors; program committee; meeting arrangements; agriculture; road and public improvements committee; civic  
509 welfare committee; fish and game committee; youth activity; airport and aviation committee; legislative committee; membership committee; publicity and development committee; and it has what we call the "Save the Tracks Committee" now. That is directed to this particular matter, isn't it? A. Yes.

Q. In other words, this Valier Community Club is not just a club that originated by reason of this difficulty now, is it? A. As I recall it, it has been in operation for probably three or four years.

Q. And it is an active group of approximately two hundred members of the community hereabouts, farmers and business men; is that right? A. Yes, sir.

Q. Working together for the betterment of this community and the farming interests, and the state; is that right? A. Yes, sir.

Q. I have here the figures that you referred to, of Pendroy, 47 cars; 25 to 30 cars at Agawam and Farmington,—25 to 30 at Agawam and the same number at Farmington, that is for the year, and 49 was supplied to Valier in the month of June? A. Those figures for Pendroy were for May and June.

Mr. Jardine: What was that for Valier for June?

Mr. Loble: Forty-nine.

510 Q. (Mr. Loble:) But there are five elevators here in Valier, are there not? A. Yes, sir.

Q. No; three elevators here? A. More than that,—five.

Q. All right. Five in Valier. How many in Pendroy? A. Three.

Q. And how many in Agawam? A. Well, there are two elevators there. I am not so sure that both of them are operating the whole year. One does, but I know,—but I don't know whether the other is a full time operation or not.

Q. And how many at Farmington? A. I don't know.

Q. The proportionate amount of cars that went to Pendroy and those places is far greater in number of cars than here in Valier, considering the number of elevators here? A. Yes, considering the elevators, and also the bushelage available?

Q. The bushelage available here is far greater than those other places; is it not? A. It is considerably greater than it is on the Milwaukee road, and it is, to some extent, larger than Pendroy, but Pendroy is a good producing area.

Q. On this road also you have another elevator at Williams; is that right? A. I believe there are two there.

Q. There are two there? An elevator for mustard, exclusively, is there not,—McDonald? A. I think he is at Manson?

Q. At Manson; yes. How many elevators are there altogether on this line, do you know? A. About eight, I suppose.

Q. Mr. Peterson, I think you said came here,—you have been here about thirty-three years. Where did you come from originally? Where did you live? A. From close to Fargo, North Dakota.

Q. Were your folks here as early settlers? A. They came, oh, four or five years before I did.

Q. They were here around the beginning of this colonization? A. I think they came in 1910.

Q. We generally speak of 1909 as the beginning of the colonization here, do we not? A. Yes, sir.

Q. And your folks were early settlers here in the colonization plan? A. The spring of 1910, I think.

Q. You have,—which I will not bother to identify now,—at my request very kindly assembled a number of the issues,—the old issues of the Valierian, have you not? Back to 1912? A. Yes, sir.

Q. Showing the early campaign for the development and colonization of this area,—you have gotten me this information, have you not? A. Yes, sir.

Mr. Loble: I might say that later on, not to consume the time of the Examiner now, I am going to ask leave to read excerpts from the Valierian of that time. I mention that so Mr. Jardine may know the purpose of this next question.

Q. (Mr. Loble, continuing:) When you came out here to live, you came here from North Dakota for the purpose of making your home here, did you not? A. Yes, sir.

Q. And you have? A. Yes, sir.

Q. Raised your family here? A. Yes, sir; I have.

Q. And this is where you intend to stay if you can, do you not?

A. I suppose so. I haven't found any better place.

Q. There isn't any better place, as a matter of fact, is there?

A. I don't think so.

Q. Pretty good spot. It is a good agricultural country, isn't it? A. I think one of the best in the state. I think the records will bear that out.

Q. And you, together with the other people here, have over the years planned,—made your plans toward the upbuilding of agriculture in this community, have you not? A. Yes, sir.

Q. When you came here state whether or not the fact that there was a railroad here was an important matter to you? A. Yes; it was. There were a lot of facilities that were here that were not even in the older countries where I came from. In the Red River Valley they lacked a considerable amount of the advantages that they had out here in a new country, and transportation was one of them.

Q. And looking this way for a location you took into consideration the colonization plan involving the water company and the development of irrigated land, together with the transportation facilities; that is right? A. Well, from the consideration of the irrigated land, that was something new to me. I didn't know anything about that.

Q. And so you regard railroad transportation, and did you regard it, as an integral part of this whole project here? A. I don't believe anybody would deliberately move out into an area where you would a two days journey to have transportation,—at least, I wouldn't.

Q. No. In moving to market and other things, the transportation is the life blood, you might say, or life stream, of your community, is it not? A. Especially in horse and buggy days.

Mr. Loble: I believe that is all. You may examine, Mr. Jardine.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Peterson, where is your ranch here?

A: South of town seven and one half miles,—southwest.

Q. Up on Francis Heights? A. That is right.

Q. And how far are you by road from Pendröy? A. Probably seventeen or eighteen miles.

Q. And you farm, you say, around a thousand acres? A. That is right.

Q. I suppose that is wholly grain, isn't it? A. We do have some stock; yes. Livestock; yes.

Q. But primarily it is a grain farming venture? A. Yes.

Q. Your livestock that you ship out, how do you ship them out of here now? A. We have our own trucks and generally haul it to Great Falls.

Q. As a matter of fact, practically all of the farmers ship their cattle by truck at the present time, do they not? A. Well, 515 where we run our cattle we have to go by the inspector to get our stock cleared for either Shelby or Great Falls, and it is just as handy for us to go from that south place into Conrad as it is to come around by Valier, unless the road conditions are bad.

Q. You market your cattle, I suppose, in Great Falls, do you? A. Either Great Falls or Shelby.

Q. That is at the livestock commission market at either place? A. Yes.

Q. And I don't suppose you have,—I will withdraw that; maybe you do,—do you have as many as earload lots, or do you usually ship a smaller amount? A. Smaller amounts, usually. A couple of years ago we might have had a earload and a half, or something like that.

Q. When you came into the country thirty-three years ago,—what would that make it about? A. 1916,—the 21st of July.

Q. You came in with a lot of rain, didn't you? A. Well, it was pretty wet on the road, and no roads.

Q. When you came into the country there wasn't any transportation,—I mean outside of the railroad,—other than dirt highways? A. That is right.

Q. And when the weather was bad, wet or a lot of snow, 516 the roads were practically impassable? A. Well, it didn't take snow, either. It took rain, a good rain on mud roads, with a horse and buggy, to get around.

Q. I think I said both rain,—when it rained or snowed the road was bad,—practically impassable? A. Practically impassable, yes.

Q. That condition, of course, at least so far as the town of Valier is concerned, is entirely changed now with your new oiled highway east to the adjoining road No. 89, isn't that so? A. It has.

Q. You wouldn't find many days in a year that you couldn't travel over the highway from here to Conrad,—over the oiled highway from here to Conrad? A. Well, my trouble would be getting in here, at times, especially in snowy weather.

Q. I understand that, getting into Valier, but after you got here you wouldn't have any trouble? A. Not too much.

Q. You have a good oiled road from here to the Highway 89? A. No; it isn't oiled to 89; it is gravelled.

Q. What? A. It isn't oiled to 89. It is gravelled to 89.

Q. To 89? A. That is going west. 91 is east.

517 Q. 91 is the road,— A. 91 is the road east of us.



Q. I beg your pardon. This highway north and south at Conrad is 91, isn't it? A. That is right.

Q. And there is a good oiled road from Valier to that highway, isn't there? A. That is right.

Q. Completed, I think, last year, or was it the year before? A. I don't know,—one or the other. It doesn't make much difference, I guess.

Q. Then the highway 91 is an oiled road running from beyond Shelby to beyond Conrad? A. Yes, I believe they call it a trunk highway.

Q. As a matter of fact, while it is a trunk highway, it was built approximately twenty or twenty-five years ago, and it is a narrower highway than the road between Valier and highway 91? A. Well, the one between here and what we commonly call the big highway is a lighter constructed road than what the main highway road is.

Q. Well, why do you say that? A. Because that is what the engineers at the highway commission tell us.

Q. That it is a lighter constructed road? A. Yes.

518 Q. Do you know whether or not about three or four years ago eight or nine inches of gravel were put on that road? A. I have no knowledge of that.

Q. And do you know about a year ago, or within the last year and while they were,—prior to putting the oil on the road, about ten inches additional gravel were placed on that road before it was oiled? A. On 91?

Q. No; on the highway between here and 91? A. Well, I know they worked on it. I don't know how much they put on it.

Q. You wouldn't say this highway was a lighter constructed road than highway 91? A. Well, that is what the highway commission told me when I was down there talking to them.

Q. When was that? A. Oh, possibly six weeks ago. I know I made a trip down to Helena,—well, on business connected with the committee here, and that is the,—that is one of the things I went to find out, was the condition of this highway and what traffic it would carry. We wanted to know that for our record.

Q. Did you find out how wide this highway was? A. I didn't ask about the width. I was primarily interested in the carrying capacity of it.

519 Q. Did you find out what the carrying capacity was? A. They didn't tell me in pounds. They just told me it was a lighter constructed highway, and that if they were going to have heavy traffic on it under practically all conditions the load limit would be restricted, and in the break-up season in the spring it would be severely restricted.

Q. You didn't find out the width of the oiled section? A. No; I didn't.

Q. As a matter of fact, it is wider than highway 91, isn't it? A. I believe it is.

Q. I think it is twenty feet wide on the oil, and I think twenty-six over-all, including the gravel. The information you got with reference to the highway is quite a lot different than I got with reference to load capacity. The man who built it said it was a three or four times better highway than highway 91, and would carry a bigger load; it was constructed later and eighteen or twenty inches of gravel.

Mr. Loble: Are you testifying now?

Mr. Jardine: No; I am just asking him.

Q. (Mr. Jardine, continuing:) Did you find out anything like that? A. No; I didn't get such information.

Q. Did you inquire as to the number of inches of gravel? A. No; I just inquired as to the carrying capacity of it.

520 Q. Now, you have within a short time lately hauled four or five thousand bushels to Pendroy. You receive more for your wheat at Pendroy than you do at Valier, for the same grade of wheat? A. Well, that varies with the seasons. When you are hauling loan grain, which we did at that time, you get the loan price at your,—

Q. Well, we understand that. But when you are selling a cash crop,—do you ever haul grain and sell it for cash? A. In years past there has been as high as three or four cents more at Pendroy than it has been at Valier. But that doesn't always hold. Sometimes,—it just varies with the notion they have got, or something, I guess.

Q. In the years past have you hauled any grain to Pendroy other than this four or five thousand that you speak of? A. We hauled a couple of thousand bushels of barley last year, but that was on account of the wet weather. We couldn't get this way with it. We were on the wrong side of the creek and no bridges.

Q. That is the only grain, other than this four or five thousand you ever hauled, other than to Valier? A. A number of years ago we had a piece of land that was a lot closer to Pendroy than it was to Valier. We used to haul from that to Pendroy, but that was a number of years ago.

Q. But not from where you are farming at present? A.

521 No.

Q. Now during the last four or five years have you at any time hauled grain from the combine to the elevator? A. Here in Valier?

Q. Well, any place. A. Well, I will have to answer that in this way: The area we commonly call "Francis Heights," is probably as late in harvesting as any part of this section, so by the time we get to harvesting the rest of them beat us to the elevator and we have had to put ours in bins, to a large extent.

Q. You are practically,—you don't haul then from the combine to the elevator, on account of the fact the elevators are full, is that so? A. Well, that depends on how much grain comes in, and how,—

Q. But hasn't that been the situation for the last four or five years, at least? A. I wouldn't say four or five years; I would say two or three.

Q. Now, you referred to the number of cars at Pendroy,—I am not sure that I got this down right,—

Mr. Loble: I think my figures may have been confused on that. We will put on another witness, if you want.

Mr. Jardine: Well, I think he has the figures there that he gave.

Mr. Loble: O. K. I think my figures are correct, but—

522 Mr. Jardine: I don't doubt that, but I was somewhat confused the way it went in. I wanted to get that information.

Will you give it to him so he will have it available?

Mr. Loble: And let him read it?

Mr. Jardine: Yes. If you will just hand it to him so he can refresh his memory.

Q. (Mr. Jardine, continuing:) I am simply having that handed to you, Mr. Peterson, so you may refresh your memory. You said you checked with reference to the number of cars available at Pendroy, and I think you said forty-seven. Did that include both May and June? A. Just May and June, yes.

Q. And you said at Valier in the month of June there were forty-nine? A. I never checked it.

Q. Well, I am just asking you. I understood that is what went in?

Mr. Wallace Kingsbury: I think I supplied those figures, Mr. Jardine,—forty-nine for Valier. He hasn't those on there.

Q. (Mr. Jardine, continuing:) Oh, you haven't those on there. I thought you testified about that.

Mr. Loble: I will have Mr. Kingsbury testify about that.

Q. (Mr. Jardine, continuing:) You don't know then how many were in Valier? A. No; I have no idea.

523 Q. I thought you had that in your figures? A. No; I just got the Pendroy figures.

Mr. Jardine: I think that is all.

Mr. Loble: That is all.

Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: Call Mr. Leech.

ARBIE E. LEECH, was sworn as a witness, and testified as follows:

# Direct Examination

Q. (By Mr. Loble:) State your name, please. A. Arbie E. Leech.

Q. And where is your home, Mr. Leech? A. Valier.

Q. And what business are you engaged in? A. Farming.

Q. And where were you raised? A. I was raised in this vicinity, near Depuyer.

Q. Depuyer is about how far from here? A. Seventeen miles.

Q. And you have lived in this vicinity, and your family before you, for many years, have you not? A. Yes, sir.

Q. How extensive do you operate farming at the present time?  
A. I farm about five thousand acres.

Q. And where is your farm located? A. Northwest of  
524 here, on the Reservation.

Q. State whether or not, in your opinion, public necessity and convenience requires that this railroad remain? A. Yes, it does.

Q. You feel very definitely about that? A. Yes.

Q. What do you figure, or feel, will be the effect on this community and this agricultural area on the abandonment of this railroad? A. Well, I think it would affect the hauling of the grain. It will cost considerably more to take the grain out. That is the principal effect it would have.

Q. You have your own granary here in town, have you not? A. I have several granaries here; yes.

Q. You have several granaries here. You produce about how much grain, would you say? A. Well, the last six or eight years I have averaged about fifty thousand bushels.

Q. And state whether or not, in your opinion, it is feasible to use trucks in hauling grain in these quantities? A. Well, it can be done.

Q. Well, anything can be done, pretty near, can't it? A. Yes.

Q. But can it be done in a way to make it profitably operated?

A. It would be more expensive for us, as farmer-operators, to  
525 haul it out by trucks than it would be railroad, of course. We have been getting the same price, you see, for a good many years now that, regardless of this freight rate that they paid at these other points around us. We have been getting the Great Falls price, and still we have had the freight rate against us here, but that has been to our benefit.

Q. Whenever you hear on the radio at Great Falls what the price of grain was, that is the price you could sell it for here at Valier?

A. There has been times recently, as Mr. Peterson said, when we could get more at these other stations, but I am not positive of the reason but our local elevators in recent years have been paying right up to the Great Falls price, that is, the price at Conrad, or Shelby, or other stations buying.

Q. The condition that exists now in reference to grain storage is unusual in 1948 is it not? A. Well, it is, under this loan arrangement, to a certain extent. We had the loan a few years back before the war and took advantage of it, but during the war the prices justified us selling it.



Q. In other words, the price was up so you kept on selling? A. Yes.

Q. But now that the price is down everyone, practically, is  
526 selling at the same time, aren't they? A. Well, now since the price is down nearly everyone takes advantage of the loan arrangement with the Commodity Credit Corporation.

Q. And the Government gets the grain? A. Yes; it has this year.

Q. And that is why your elevator is filled, one reason? A. One of the principal reasons.

Q. You have another crop coming along? A. Yes.

Q. I think you told me that within the next six weeks, in your opinion, they could use about two hundred ears here, is that right? A. Well, I understood they had orders for about two hundred, approximately.

Q. The revenue on grain,—and this ought to be a matter of some comfort to the Montana Western and to Mr. Young,—the revenue on grain from two hundred ears ought to let them operate during the next year, oughtn't it? A. I wouldn't be familiar with the figures, but it would help, I imagine.

Q. Yes. Now, what is the problem that a grain operator is going to be confronted with, you as a business man and a farmer, assuming that the railroad is abandoned, and assuming the granaries here and the elevators move out of here, what is he going to have to do in reference to providing storage on his own place? A. Well,  
527 he is going to have to have more storage at harvest time, I imagine.

Q. And it costs to build storage facilities about how much a bushel? A. Well, I think if you are careful and do a little planning you can build it right now for about fifteen cents. Some of these fellows tell you it costs more, but I think it can be done for that, fifteen cents a bushel.

Q. In other words, you build a storage on your place,—as we came along today we saw these red little houses out here,—are those storage? A. Those are storage, yes.

Q. Those are yours? A. Here in town?

Q. Yes. Those are yours? A. Yes.

Q. You have grain stored in those, or will have? A. Well, I hope to have. I have got some now, and I hope I will get them filled.

Q. When we came in it was raining, and I guess you will. Just as a matter of curiosity, what will one of those storage places you have out here on the road, what will be the capacity of one of those? A.

Some four thousand, but they will average a little over three  
528 thousand.

Q. So as you get your grain, and waiting for cars and waiting for an opportunity to ship, you will bring that in from your place and put it in here, will you not? A. Yes.

Q. Well, you said it cost around fifteen cents per bushel to build places. State whether or not this is true: That many of the farmers do not have storage on their farms? A. Oh, I think some of them haul grain,—plan to haul most of it to the elevators. Some of them have more storage than others, of course.

Q. But without elevators here in Valier, will you have any problem? A. Oh, I think so. Yes, sure.

Q. Of course, as has been testified here, the Great Northern can't miss,—that is the only road there is here, isn't it? A. You couldn't very well get to any other.

Q. In other words, if they take out your railroad you have got to get there some way, is that right? A. The Milwaukee at Agawam is the only other close point, and that would be very impractical for this community.

Q. Yes. Now, to haul,—what is the problem in hauling grain,—for a farmer to haul it to the elevator, say, at Shelby, or Conrath, or some place like that? What happens? A. There doesn't anything happen any more than at any other elevator, if you can get in with it.

Q. That is right. If you are hauling there and you get to the elevator, and there are other people hauling and you have to wait around to unload, that increases your costs, does it not? A. Oh, yes. You couldn't very well afford to go that far unless you knew you could unload.

Q. You don't know of any elevator that,—you haven't heard of any elevator that is going to remain here, other than Cargill, have you? A. Not that I know of. I haven't heard anything about it.

Q. And you don't know how long Cargill will remain here? A. No. I don't know anything about it.

Mr. Loble: Thank you. That is all.

### Cross Examination

Q. (By Mr. Jardine:) Mr. Leech, I think you said in answer to a question of Mr. Loble that public convenience and necessity requires the operation of the Montana Western Railway; that the effect of the abandonment of the railroad would be,—the principal effect of the abandonment of the railroad would be on the marketing of grain? A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. And actually that, so far as your judgment is concerned, that is the principal,—or would be the principal effect of the abandonment of the railroad,—its effect on the marketing of grain? A. Well, I think so. The point that I,—what I had in mind when I said that was the fact that I don't think it makes much difference whether the mail or the express came in one

way or another, but it would make quite a lot of difference whether they hauled the grain out.

Q. Nine-one per cent, or more, of the traffic on the Montana Western for a number of years has been agricultural products moved out, and so far as the balance of the traffic over the railroad is concerned, it probably could, without very much difficulty be arranged to get that in by truck or some other means, so that the principal effect is in the marketing of grain? A. Yes, sir.

Q. Now, if the railroad were abandoned, and if the elevators were able to continue to operate and deliver grain by trucks themselves as cheap as they deliver it by train, it wouldn't have any effect, would it? A. I don't think so, if they could take care of us.

Q. It doesn't make any difference to you,—I mean if the cost of delivery from the elevator to Conrad is the same by truck as it was by train, it wouldn't make any difference to you how it was hauled?

A. No; it wouldn't make any difference.

531 Q. And in such a case the effect of the abandonment of the railroad wouldn't be very heavy on the community, would it?

A. No; not if the grain could be taken out at the same price I don't see that it would make a great deal of difference so far as the grain is concerned.

Q. Well,—

Mr. Jardine: I think that is all,—no; there is one more question:

Q. (Mr. Jardine, continuing:) You talk about the cost of building storage. Does the government pay anything,—I mean for grain storage? A. You mean on these loans?

Q. Yes. A. Well, they pay,—they allow seven cents for the storage of wheat on a loan, but they don't allow on the storage of barley on a loan, but when the loans are re-sealed, this year they have offered ten cents a year to keep that barley,—or wheat over for a year.

Q. That is where you have your own storage? A. Yes.

Q. And that is a yearly payment to you, is it? A. Well, for the wheat, your loan runs from the time you take your loan in the fall until the 30th of April, but for the barley, it was the re-  
532 sealing of these loans, where they are running for the second year, that is for the year, yes.

Q. What I am getting at is, if you build a storage capacity for yourself and store grain, for instance, you are not limited to just the seven cents, for instance in one year,—you get that for each year you store it? A. Well, this is the first time they ever offered,—ever asked you to carry it a second year,—since the Commodity Credit Corporation has been handling the wheat in this particular community, any way.

Q. That is, carrying the same wheat, you mean? A. Yes. You see we always before,—we either sold it or they took it, but now

there is so much apparently that they ask the farmer to keep it, and offer him ten cents a bushel to keep it over another year.

Q. But what I am getting at: When they did take it you got seven cents a bushel in prior years for your storage? A. Yes.

Mr. Jardine: I think that is all.

Mr. Loble: That is all.

(Witness excused.)

Examiner Bernhard: It is getting well onto six o'clock. We will adjourn until seven thirty this evening.

(A recess was taken at 5:40 p. m., July 12th, 1949, to 7:30 p. m. the same day.)

533 Examiner Bernhard: We will resume the hearing.

Mr. Loble: Is Mr. Swanson here?

N. J. SWANSON, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. N. S. Swanson.

Q. And your residence? A. Valier, Montana.

Q. How long have you lived in this community, Mr. Swanson?

A. I have lived here three years and three months.

Q. And what is your occupation here? A. My principal occupation is banking, and farming.

Q. What is the name of the bank here, please? A. Farmers and Stockmen's Bank.

Q. And what official position do you occupy in this bank? A. President.

Q. This bank is chartered by the State of Montana? A. Yes, sir.

Q. And when was the bank established? A. It was established,—opened for business October 14th, 1946.

Q. And at the time it opened, and now, it is the only bank  
534 in Valier, is it not? A. Correct.

Q. It maintains banking quarters here in this city, does it not? A. Yes, sir.

Q. What,—how much are the deposits in that bank? A. Right now, at the low period of the year, approximately nine hundred thousand dollars.

Q. Within what period of time did the banking deposits with this institution, from the time it was established reach a million dollars? A. The second year.

Q. It started from scratch, and in the second year it reached a million dollars? A. In fact a year and,—just about two years.



Q. Am I correct in saying this bank started from scratch? A. Absolutely.

Q. And in side of,—within two years time it had reached deposits of one million dollars? A. Yes, sir.

Q. Has this bank in the limited time it has been in existence paid any dividends on the capital stock? A. No. It is a common practice for banks starting up to accumulate earnings, and it is rather rarely that a newly organized bank makes any more than expenses for the first two years. We made them the first year.

535 Q. You made your expenses the first year? A. Yes, sir.

Q. Then you have started to accumulate, have you? A. Yes, sir.

Q. And it is good banking practice, is it not, rather than the payment of dividends to accumulate what is commonly referred to as surplus? A. Right.

Q. And that is what you are doing? A. Yes, sir.

Q. State whether or not this is a prosperous, substantial community? A. For the number of acres in the total area, and for being a primary market, exclusively, it is a desirable location.

Q. This bank is a member of the Federal Reserve System, is it not? A. Yes, sir.

Q. And before it became a member of the Federal Reserve System it was necessary to submit data as to this community, as to the financial stability of this bank, did it not? A. Yes; of course that wasn't the question of a newly organized bank, but in addition to passing on the amount of invested capital furnished they pass upon the trade area to see whether it justifies a banking unit.

536 Q. And the Federal Reserve Bank that passed upon that is located in Minneapolis, is it not? A. Yes, sir.

Q. It is a member of the Ninth District? A. Ninth District; yes.

Q. In the passing on the trading area and the determination of the desirability of a bank here, transportation was a factor, was it not? A. Why, definitely,—naturally, yes. I analyzed the trade area and the facilities. Everything enters into a banking location, the transportation and the number of elevators and the schools and practically everything that,—a bank is a little different from a merchandising establishment and so forth. It must have a rounded out unit to support a bank; otherwise people will go elsewhere, where the facilities are available.

Q. And this community met those requirements, did it not? A. I analyzed them, and as analyzed and reported, they were passed on favorably.

Q. And the State of Montana through its banking department before it granted a charter,— A. (Interposing:) On the same basis.

Q. (Continuing:)—make inquiries on the same basis, did it? A. Yes, sir.

Q. As a matter of fact, there haven't been so very many state charters granted in the past years in Montana, have there? A. Very few.

Q. And you met the requirements of the state and established a bank, and that is no light matter, is it? A. No; you have got to prove the need of it, and that the people in the area served by you want it.

Q. Yes. The City of Valier is at the end of the line, that is, at the end of the Montana Western line; that is right, isn't it? A. Yes, sir.

Q. Do you know of any community in the State of Montana that is at the end of a railroad line, particularly in this vicinity, that compares more favorably in the matter of progress, schools, population, structures, development, than the town of Valier? A. I know of no place that would meet the resources and area like Valier; otherwise, I would have considered it.

Q. Yes. We have within a near radius here other towns such as Pendroy that is at the end of a line, is it not? A. Yes, sir.

Q. And the end of the Milwaukee line is what? A. Agawam.

Q. Agawam is really a place that has a couple of section houses and a grain elevator or so? A. But their area served is very small.

Q. Yes. A. The Porter Bench is a small area,—it is good, but there is,—I don't remember the figures, but I checked into it,—their shipments do not compare favorably with Valier.

Q. The town of Valier is between seven hundred and eight hundred in population, is it,—the town proper? A. I would, in round numbers, say eight hundred. It is more than seven hundred and fifty and a little less than eight hundred.

Q. It has such business concerns such as have been enumerated here, has it not? There has been many places mentioned: It has a hotel, a substantial building, is it not? A. For a minimum unit it has just about every necessary business to make a rounded-out community.

Q. In other words, it is not a town that has slipped in the past, has it? A. Why, it has improved.

Q. It is a growing community, is it not? A. It has been over the past three years. There have been several new establishments and improved establishments; increased telephones; increased water users, and increased electrical and gas users.

Q. It is supplied with electricity by the Montana Power?

A. Montana Power; yes.

Q. Supplied with natural gas for heating by whom? A. Montana-Dakota Utilities, Minneapolis.

Q. The structures and homes, many of them, use natural gas for heat? A. Yes, sir.

Q. You have civic improvements, have you not? A. Yes, we have, in fact, above the average for the size of the community. That is what attracted me in the first place, was the civic pride and the unwillingness to be satisfied with the ordinary. They want just a little better.

Q. You have here Lake Francis which is an attractive fishing place, is it not? A. It is an asset to the entire state.

Examiner Bernhard: Could you speak a little louder? I am having a little trouble hearing you. A. Lake Francis, which is an asset to the entire state.

Q. That is a lake,— A. A resort.

Q. A lake of some seven miles in length, is it not? A. Approximately.

Q. It has trout fishing, an other types of fishing, does it not? A. Yes, sir.

Q. Boating? A. Yes, sir.

540 Q. You are not far from Glacier Park, is that right? A.

It is very easy to drive to Glacier Park and back in half a day, and see most of the park.

Q. Now, the community itself has grown, has it not, Mr. Swanson, from the fact it is the trading center of an excellent agricultural area? A. If not the best, it is one of the best in the state.

Q. Irrigation,—I think all of us who live in Montana will agree, and water is the life blood of the state, is it not? A. Absolutely.

Q. And there is scarcely anything that cannot be done if you have water, is that right? A. Every form of hedging and diversification is possible here. Sugar beets can take the place of one thing; livestock feeding can take the place of another with the cycle of events and change of conditions and markets.

Q. By reason of irrigation, by reason of the type of fertility, the people of this area can adapt themselves to almost any changes in the agricultural picture, can they not? A. Absolutely.

Q. In connection with agriculture, and the city, state whether or not the question of transportation is a vital part? A. Why, 541 it is absolutely necessary.

Q. You spoke of the civic pride of this community,—you are a member of the Valier Community Club, are you not? A. Yes, sir.

Q. And that is the Club which I represent here,—that is made up of approximately two hundred persons, is it not? A. Yes, sir.

Q. You meet how often? A. We meet monthly.

Q. And at that time,— A. (Interposing:.) In between times the committees are at work, all during the month.

Q. You have this large number of committees that I read here to the Examiner a while ago, have you? A. Yes, sir.

Q. And your meetings are active meetings in the interest of the community, are they not? A. Yes, sir.

Q. For instance, one of your committees participated in the planting,—I heard at a banquet,—of some six thousand trees on Lake Francis, is that right? A. Yes, sir.

Q. And your committees do most of the work themselves, do they not; in the Club? A. They do. And one outstanding thing about the committees,—or the Club, is that it will enter into nothing factional. Any program that is adopted has to be for the common good, and not for just the merchants, or for the fishermen, or anything like that. It has to be for the common good and voted on before it is ever accepted.

Q. And your Community Club, when it determines on a project, doesn't hesitate to go out and perform the physical labor itself to accomplish it? A. That is an unwritten law, that the chairman, or a person appointed to a committee,—it is a life and death proposition; he has to come through.

Q. He can't let George do it? A. No, sir.

Q. He goes out and gets a pick and shovel and helps plant the trees, doesn't he? A. Yes, sir; anything that is necessary.

Q. And the rest of them do the same? A. Yes, sir.

Q. Do you have a ball team here that you help? A. Yes, we enter into anything for the common good of the people.

Q. And so this Club, with its wide range of activities, is vitally interested in the program of "Save the Tracks;" that is right? A. Yes, sir.

Q. And state whether or not, in your opinion as a banker and a resident of this community, public necessity and convenience requires the saving of the tracks, and the continuation of this railroad? A. Well, if I interpret the meaning of "convenience" and "necessity," emphatically so.

Mr. Loble: All right. You may examine.

Mr. Jardine: No cross examination.

Mr. Loble: Thank you, Mr. Swanson.

Examiner Bernhard: You are excused, Mr. Swanson.

(Witness excused.)

Mr. Loble: Call Mr. Wollam.

LEO A. WOLLAM, was sworn as a witness and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. Leo A. Wollam.



Q. And where do you live, please, Mr. Wollam? A. At present I live in Great Falls.

Q. And where did you formerly live? A. I lived in and around this territory up until December of 1945. I used to run our grain elevator, the International elevator, at Williams.

Q. You run,—you are identified with the International Grain Elevator Company? A. Yes.

544 Q. And what is your official position in Great Falls? A. At present I am in charge of our agricultural-chemical program for our company for Montana.

Q. State the extent of the International,—whether it is just in this state, or elsewhere? A. We operate in Montana, North Dakota and Minnesota.

Q. And state whether or not it has extensive holdings in elevators? A. Yes.

Q. And whether or not it is an old established concern? A. Yes, it has been in existence, I think, for approximately seventy years.

Q. Now, the town of Williams is located on the Montana Western railroad, is it not? A. Yes, sir.

Q. And you were there for some time? A. I was there from August of 1928 until December of 1945.

Q. And in what capacity were you there? A. As manager of our grain elevators at that point.

Q. State the,—state whether or not there is an International elevator there, and if so, its capacity. A. There are two International elevators there, and their total capacity is approximately eight thousand bushels at present.

545 Q. What would you say would be the worth, or replacement value of those buildings? A. At present the replacement value of the whole plant, including the bulk plant and two grain elevators and annex, would probably run around,—this is an estimate only,—probably between eighty and a hundred thousand dollars.

Q. Is the International located on the Montana Western Railway? A. Yes.

Q. And how important is the operation of the railway to the International's holdings at Williams? A. I would say it was very important.

Q. In locating there was consideration given to the fact that it was on the railroad? A. Yes, undoubtedly.

Q. And how far is Williams from Conrad? A. Approximately sixteen miles.

Q. Now, in the event this railroad was discontinued what, in your opinion as an experienced elevator man, would be the effect,—would be the ultimate fate, let us say, of your elevators? A. That is a

little difficult to answer. It would be one of two things, either the elevator would fail to continue to operate, or some other means would have to be worked out to truck the grain from the elevators to the terminals. I would like to say something here, if I may?

546 Q. I would like you to. A. The testimony was offered previously that Cargill, Incorporated, probably would continue to operate their elevator if the Montana Western was abandoned. Some of the rest of the companies are in a somewhat different position than Cargill, Incorporated, in that Cargill, Incorporated, has a plant at Conrad, and it would theoretically be feasible for them to move the grain which was received at the Valier elevator to Conrad, to be shipped out through their Conrad facilities. We have no such facility at Conrad. There would be no object in our loading trucks to move them to Conrad, Shelby, or any other local point, for the reason that normally such points are already plugged, and if the elevator did survive, and we moved it by trucks, the alternative would be to move it to a terminal.

Examiner Bernhard: I didn't quite get that?

The Witness: The alternative would be to move it to a terminal, either eastern or western.

Q. (Mr. Loble, continuing:) The grain, you are speaking of?

A. Yes, sir.

Q. If I understand you correctly, you would not transport your grain by truck to Conrad, but you would have to transport it to Minneapolis, or to the west, to some terminal, is that right?

547 A. Yes.

Q. And to transport it by truck such a distance, would that enable you to compete successfully with Cargill, who could transport it and send it to its own plant at Conrad? A. I would say no.

Q. You know, do you not, Mr. Wollam, that a truck operation will run twenty-eight cents to thirty cents per running mile, don't you? A. Yes; that is approximate.

Q. Taking into consideration depreciation, insurance, and employment of labor, that is about the average cost around here, is it not? A. Yes.

Q. And so if you ran to Minneapolis, which I think probably is roughly twelve hundred miles, you would have the cost of, let us say, thirty cents a mile going there, would you not? A. Yes.

Q. And you would have the cost of thirty cents a mile coming back, would you not? A. Yes.

Q. In other words, it would cost you a total of sixty cents a mile to run that terminal, that is correct is it not,—and back? A. Yes, I would say that is right.

Q. You are aware of the fact that you would not be permitted to have a back-haul from Minneapolis unless you first were  
548 able, through a hearing before the I. C. C., or the various regulatory bodies of the different states, and establish, in competition with present transcontinental carriers, your right to carry merchandise back from Minneapolis,—you understand you would have to do that? A. Yes.

Q. In other words, when you would apply for a right to bring merchandise back, state whether or not you wouldn't be confronted with the protests from the Great Northern, Northern Pacific, Milwaukee, Consolidated Freightways, Northwest Freightways, and all other carriers that are on the road, would you not? A. Yes.

Q. Do you think, with those difficulties ahead, that you could very successfully truck grain that you now transport over the Montana Western? A. I would say it would be a pretty difficult proposition.

Q. Now, there is an expression, "milling in transit," that I am not too familiar with, and I understand there is a certain loss that results from trucking operations under milling in transit. Would you be good enough to explain it? A. A large part of the grain, for instance, that, for instance, our company ships from its Williams elevator, for example, moves to Minneapolis or Spokane, with the  
549 privilege of being milled into flour in transit, and then moved on as flour to its ultimate destination, on a through freight rate, whereas, if it would be trucked into such terminal, you wouldn't have that milling in transit privilege. It would be considered then as originating again at the point where it was milled, rather than being shipped through on a through freight structure.

Q. So that if you took this to a mill in Great Falls,—there is a mill there, is there not? A. Yes.

Q. What would be the result? A. Well, normally, the result would be that the grain would be less valuable to the mill without the milling in transit privilege, than it would be with it.

Q. And how much,—what would that usually run a bushel? A. I couldn't quote you that figure as to Great Falls. As to Minneapolis, it would run approximately an additional eight cents per hundred on the basis of the bushels of grain.

Q. And who would eventually sustain that loss? The grower? A. Well, somebody would have to. It would either have to be passed back to the grower, or absorbed by the trucker, and on the basis of the cost of trucking it I don't see how he could absorb it.

Q. Having these things in mind, state whether or not, in your opinion, public necessity and convenience requires the operation, and the continued operation, of the Montana Western  
550 Railway? A. From our standpoint, very definitely yes.

Q. To you it is a matter of life and death? A. It is, I would say, for our Williams elevators. At least, it would be a very, very serious setback to them, and it could be fatal very easily.

Q. And its effect on the grain growers would likewise be serious, would it not? A. Yes, you would be removing a lot of storage capacity and a lot of grain handling capacity from the community.

Q. What else is there located at Williams in the way of elevators? A. There are no other elevators, except the ones we have there. We also have a bulk oil station at Williams.

Q. There is a mustard elevator some place? A. That is at Manson.

Q. Where? A. At Manson.

Q. Williams is a small place, is it not? A. Very small.

Q. A matter of fifty people, or more? A. No; I think there are, —if they are all home, there is about ten.

Q. I won't ask you if they are all home. How about Manson, if they're home? A. I am not quite so familiar with Manson, but I would say it was probably smaller, at least no bigger, than Williams.

Mr. Loble: Well, you may examine.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Wollam, how long have you lived in this community? I think you said,— A. Since 1920, that is, from 1920 to 1945.

Q. That is, in this community in general, here? A. Yes, in and around Valier and Williams.

Q. You knew Williams when it was a pretty good sized little community, there, didn't you? A. Yes.

Q. There used to be about seven or eight pretty good sized houses there? A. Yes, I believe there were more than that. I think there was probably a dozen,—close to it.

Q. And there used to be a general store there? A. Yes.

Q. And a good sized store, and machine shed, and so forth, in Williams, didn't there,—and at one time a creamery? A. Yes.

Q. However, in recent years those activities have all been abandoned so that now about the only thing left in Williams in the way of a commercial enterprise is the International elevators, isn't it? A. Yes.

Q. And you people own the two elevators, that is, the International owns the two elevators that are situated there? A. That is right.

Q. And you also say you have a bulk oil plant there? A. Yes.

Q. Is your oil brought in over the Montana Western? A. No, it is not.



Q. How is it brought in? A. It is mostly delivered by truck. I might add we have no control over that. We buy on a delivered basis.

Q. Where do you buy from,—I don't mean what outfit, but what town? A. It originates at Sunburst, and is trucked from Sunburst to Williams.

Q. Is the truck one of these big trucks that haul oil up and down the highway, or is it a small truck? A. It is normally trucked by about a five thousand gallon tanker.

Q. Do you know about what that holds,—or how many pounds that would hold? A. I can't give you the gross weight. Normally, that would be about thirty-five thousand pounds of gas, plus the weight of the truck.

553 Q. They don't, I suppose, have a trailer on behind? A. Normally, not to Williams.

Q. But they have, I suppose, at some time or other? A. To my knowledge, they haven't. They generally have a single unit into Williams.

Q. I see. They operate over the highway between,—over the new paved highway up until they get north of Williams, I suppose, don't they? A. Yes, normally, they would.

Q. And from that paved highway which extends east from Valier to highway No. 91 Williams is about two miles south, or two and a half miles south? A. About two miles south, and you double back a little over half a mile east.

Q. So that the trucking would come in over Highway No. 91, and then west over the Valier highway to a point about a mile east of Williams and two miles north, and then turn in south? A. Yes, normally.

Q. And about a half mile southeast into Williams? A. Yes; that would be the normal route.

Q. The head of your company, I suppose, has been advised of the petition for abandonment of this railroad? A. Yes.

Q. I think they have taken, or given consideration, have they not, to the matter of trucking grain from Williams if the railway were abandoned? A. They have looked into it, but how thoroughly I don't know. Of course, they would naturally examine all possibilities. How thoroughly they have gone into it, I wouldn't know.

Q. And the results they have found from their examination you don't know? A. Not as to the feasibility of it. They have, of course been aware, of what I mentioned before, the milling in transit privileges would be accorded truck shipments.

Q. Wouldn't it be,—for instance, if you built some kind of a facility in Conrad that you could dump grain into and put in the

cars at Conrad, you then would have this privilege, would you not? A. If it was loaded on the cars at Conrad; yes.

Q. Even though it were trucked from Williams to Conrad, you would still have that privilege, wouldn't you? A. Yes, if it moved by rail from that point, it would have the milling in transit privilege.

Q. Do you know whether or not any consideration has been given by your company to the idea of building facilities in Conrad that would permit them loading grain at Conrad that they had hauled from Williams to Conrad? A. I talked that over briefly with Mr. McCabe, and his attitude on that was, "Why build one elevator to protect another?"

Q. What was that? A. His attitude on that was, "Why build one elevator to protect another?"

Q. In other words, he thought it would be either cheaper to rebuild in Conrad,— A. Unless something could be worked out on it through transit deal.

Q. Do you know anything about the feasibility of the company using one of these carloaders like they use on the ranch to dump your grain, for instance, into a smaller unit, and load it from that into a box car,—through a carloader? A. It would be pretty difficult,—I am speaking of course from the standpoint of when you are moving grain through a commercial elevator, you are handling capacity,—we will say your carloading capacity may run up to five thousand bushels per hour, whereas, your track loaders are usually very low in capacity, and from a physical angle it would be pretty difficult for them to keep the trucks unloaded that you might load and send down to them.

Q. Well, that would depend, of course, on the size of the storage that you erected at Conrad, and the number of cars you had to load, wouldn't it? A. Yes.

Q. You could only feasibly haul enough grain to put in the storage, and from the storage into the cars you had on hand? A. Yes.

Q. And for quite a number of years the car shortage has been somewhat acute? A. Yes, it has.

Mr. Jardine: That is all.

#### Redirect Examination

Q. (By Mr. Loble:) One question, if I may? On this road, Montana Western, there are how many elevators, and where are they, and their names? A. At Manson there is the E. L. McDonald Mustard Company, which is the only elevator in Manson; in Williams there are two elevators, both belonging to International Elevator Company; and in Valier there are two elevators belonging

to Cargill, Incorporated, one to the Farmers Union, one to the Gallatin Valley Milling Company, and one to Greeley. I believe that is all.

Q. All those elevator companies are substantial elevator companies that are in operation throughout this state, and other states, — some of them, I think? A. Yes.

Q. In other words, there are five elevators in Valier? Right? A. Yes.

Q. There are two at Williams?

557 Q. And a mustard elevator at Manson? A. Yes.

Q. Eight, altogether? A. Yes.

Q. How many elevators in Conrad? A. I think there is seven. I can't say absolutely definitely, but I believe there are seven outlets in Conrad. Somebody else can probably give you an answer to that better than I can.

Q. We will have someone enumerate them. A. Yes.

Q. In other words, these elevators, it has been testified here, will along this road handle about a million bushels of grain. A. Very close to that in a year.

Q. For the use of those eight elevators. Do you know where that grain could be put into in Conrad? A. No.

Q. Conrad is filled itself, is it not? A. Yes.

Q. In other words, unless these same elevators were rebuilt, or similar ones there, so far as taking it to Conrad is concerned, it would be out of the question, wouldn't it? A. There would be very little use. It would merely plug Conrad the quicker.

558 Q. By the way, the mustard elevator,—mustard is used for what? A. A number of purposes. It is used for oil. The yellow variety winds up on hot dogs to quite an extent.

Q. Yes. I think I have had some oil in mine. The oil is a marine oil, is it not? A. It is used for a lot of purposes, used partly for marine oil, and for any general purpose where oil is required. It is quite a universal product.

Q. And this mustard elevator is exclusive for that, is it not? A. Yes.

Mr. Loble: That is all. Thank you.

Mr. Jardine: No further questions.

Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: Call Mr. Seifert.

JOSEPH SEIFERT, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. First name in full?

Q. Yes. A. Joseph P. Seifert.

Q. Where do you live, Mr. Seifert? A. At Conrad.

559 Q. How long have you lived in this general vicinity? A.

In this immediate vicinity since 1919, and before then at Shelby since 1910. I homesteaded south of Shelby.

Q. And you are engaged in what business? A. Well, I am supposed to be a retired farmer, but so far it is mostly tired.

Q. A tired farmer? A. That is right.

Q. Do you,—have you in the past,—either now, or in the past, been engaged in grain farming in this locality? A. At the present time, why, I am in partnership with my son who lives out on the farm. It is practically all grain farming now, but until he took over, why, it was mixed farming. I had a considerable amount of livestock.

Q. You are familiar with this community and know it well, do you not? A. Quite well; yes.

Q. Do you consider Valier a growing, prosperous town as described by Mr. Swanson, do you not? A. Valier is a very nice town; yes, sir.

Q. And the area around it, from an agricultural standpoint, state whether or not you consider it as good an area as you know of in the state? A. I consider it one of the best, if not the best, agricultural areas in the State of Montana.

560 Q. State whether or not it adapts itself to diversification more than most of them do? A. It does; yes.

Q. You yourself have been in various types of agriculture, as you have described, livestock, farming, and probably other types, have you not? A. That is right.

Q. Now, in connection with this community, it is one of the few agricultural localities that has early devoted itself to irrigation, is it not? A. It has.

Q. And state whether or not, as a farmer and from your general observation, that you have learned that over a period of years and a long pull, irrigated land is very desirable? A. It is. That is the reason I moved across the river from the other side, on account of the irrigation.

Q. In other words, with irrigation you have assurance of a crop that you do not have otherwise? A. That is right.

Q. While dry land may be very successful, and we hope it always will be, and it has been in the past, there are many hazards that you do not have in irrigation; is that right? A. That is right.

Q. You filed a protest against the abandonment of this

561 railroad on behalf of yourself and one of your co-directors,—Mr. Palin is another director, and he is identified with the Montana Western, is he not? A. That is right.



Q. The name of this concern is the Pondera County Canal and Reservoir Company? A. Yes.

Q. That is the water users of this, what is commonly called the Valier Irrigation Project; that is right? A. It is an organization of water users on the project; yes.

Q. And roughly, how many water users are there on the project? A. Well, I do not know the exact number. I would say there are several hundred. I have an idea Mr. Palin could give you possibly the exact number.

Q. But several hundred would be a fair estimate, would it not? A. I would say so, that is on the entire project.

Q. That means that there are several hundred persons who are water users, and who are members of this corporation,—or group? A. Yes.

Q. The water users are together and belong to the Pondera County Reservoir and Canal Company, do they not? A. They do. That is provided for in the Carey Land Act Law. That is my understanding.

562 Q. Yes. In other words, the Carey Land Act was,—by the way, named after Senator Carey of Wyoming,—and may I ask you if this isn't correct. That after this act was passed years ago, the Government of the United States gave to the state a million acres of land that was susceptible to irrigation with the requirement the state sell that at fifty cents an acre to settlers, and that some company be obtained to construct an irrigation project, and that the stock,—water stock, be sold to the settlers, and the settlers band themselves together under the law, and the water users in such a group as the Pondera Canal Company? That is substantially it, is it not? A. Well, as to the amount of acres, I don't know, whether it was a million acres, or what it was, but outside of that I think that is substantially correct; yes.

Q. Under the Carey Act there is a project of this kind on the Billings Bench, or are you familiar with that? A. Well, I am not too familiar. I know a little about it.

Q. And some of the other western states have availed themselves of the Carey Act, like Idaho and elsewhere? A. I understand there are several in Idaho.

Q. Now, these water users all own stock, do they not, and by virtue of their owning this land are entitled to the use of water at a certain rental, are they not? A. That is correct.

Q. What is the rental? A. One dollar per share per year.

563 Q. And if you have,—is that one dollar per acre? A. It amounts to the same thing. It is not a rental, incidentally,—it is a maintenance and operation charge.

Q. In other words, if one has one hundred and sixty acres, he has one hundred and sixty shares of stock, is that right? A. Provided

the entire one hundred and sixty acres are under the canal, and that a share of stock has been applied to each and every irrigable acre.

Q. So he would pay one hundred and sixty dollars a year for maintenance charge; is that right? A. If he has one hundred and sixty shares of water stock; yes.

Q. And that is paid in this instance to whom? A. It is paid to the,—to one of the directors of the Pondera County Canal and Reservoir Company. It is sort of a,—oh, I wouldn't say intricate set-up, but to date it has been a very convenient set-up.

Q. Then that director pays it to whom? A. To the,—at the present time, to the operating company, which is The Valier Company.

Q. The Valier Company operates the water company, as we call it? A. And the water company operates the project.

Q. Yes. So that this money the farmers pay in,—the holders of the land pay in to their company, the Pondera Canal and  
564 Reservoir Company, is by them turned over to The Valier Company for the maintenance of the project? A. That is approximately it. If I make a misstatement in regard to that, Mr. Palin, will you correct me on it, please?

Q. Now, I just wanted to get substantially,— A. (Interposing:) The reason I am making that request, Mr. Loble, is: Mr. Palin is one of the directors, and he is also an employee of The Valier Company, and that is why I made that remark. It has been a very convenient set-up. As a director and collector of this maintenance he does not get any salary. You get what I mean?

Q. I get you. A. It is an economical way of operating.

Q. Now, about how much irrigated land is there in this project, roughly? A. My understanding is that there are approximately seventy-two thousand acres.

Q. Now this Pondera Reservoir and Canal Company has officers, and you are at the time the president of the company, are you not? A. That is right.

Q. And have been for about how long? A. Oh, several years. I don't recall just exactly what the year was, but several years ought to be plain enough.

Q. And there have been, over the years, different persons  
565 president of the company? A. Yes.

Q. And as president of the company, you, and those before you, you are interested in the protection of the interests of the water users, are you not? A. That is right.

Q. Now, in your opinion, state whether or not public necessity and convenience requires the operation of the Montana Western Railroad? A. Well, in my opinion,—you can take it for what it is worth,—but I believe life or death of the Montana Western

Railroad means the life or death of the Valier Irrigation Project, as I see it.

Q. And will you explain that, if you will? A. Well, as I see the thing, it amounts to approximately this: In my opinion, it will work out about like this: The west end of the project here has land that is better suited to dry land farming, probably, and undoubtedly, than the eastern part of the project, the part around Conrad and Ledger. If the Montana Western Railroad is abandoned, it will put some of the irrigated land in the western part of the project, as much as twenty-five,—from twenty-five to thirty, I will put it that way,—as much as twenty-five to thirty miles from market. It might look on a map like the land on the north side of the project here would be, as the crow flies, fairly close to Ethridge and 566. Cutbank, but anybody that has ever traveled the road by way of what is known as the Solomon bridge, I think will agree with me, it isn't feasible to haul grain across the Marias River at that point, on account of the fact that the bad lands and breaks of the Marias River are something like three hundred and fifty feet deep, and the road that is across there is,—it's just not feasible to truck grain across there under present conditions. It would take an immense sum of money, in my opinion, to make a road that would be passable for grain trucks with a heavy load. Therefore, I say that land up there which is, as the crow flies, closer to Cutbank and Ethridge than it is to Shelby, Ledger and Conrad is, in reality, as far distant from a shipping point as it is to Conrad, Ledger or Shelby, which is approximately twenty-five to thirty miles.

Q. So that you might find water users,—who are now water users, would cease to be water users if there is no railroad? A. Yes, it would work out, in my opinion, about like this: Here and there an irrigation farmer would give up the Ghost, as it were. He would quit, and the land, of course, would not lie idle. One of his neighbors would acquire the land and increase the size of his unit, and as the size of these units were increased it would have a tendency to stop the payment of maintenance on account of the distance from market, and so on. Intensive irrigation farming costs more money, and, as I say, the tendency would be to 567 increase the size of the unit, as these various individual farmers fall by the wayside, and it would gradually work into a dry farm proposition. Now then, every time some farmer at this end of the project would stop paying his maintenance it would increase the burden correspondingly on the rest of the project, and in the final analysis it would get to the point where maintenance would get so high that practically nobody would pay maintenance.

After that, why, the time would come when you wouldn't have fishing even, in Lake Francis.

Q. And that, in your opinion as president of this company and having observed this for a long time, is a very serious and potent danger, is it not? A. Very much so; yes.

Q. Consideration has been given from time to time, under the law, for The Valier Company to return the,—or turn the water company or the irrigation company over to the water users, has it not? A. That is right.

Q. And I believe that matter is having consideration at the present time, as it has heretofore? A. It is in the process of being turned over right now. At the present time nothing is happening, pending the issuance of the special report by the State Engineer's office on the condition of the various structures, canals and reservoirs of the project.

568 Q. Would you consider, as president of the company, that if this road was abandoned, would you consider that that would have an effect on whether or not the project should be turned over to the water users? A. I think it would have a very definite effect; yes.

Q. And what would that be, in your opinion? A. Well,—just what do you refer to?

Q. If this road were to stop tomorrow, say, you as president, and other water users, in the face of the new change that would be involved in transportation wouldn't want to take the water company over, would you, not knowing what the future would hold in transportation? A. No; I wouldn't. As a matter of fact, it has been decided upon by the Board of Directors,—we have talked this turn over,—we have talked about it quite a bit, and what will eventually be done after,—this is tentative, you understand?

Q. Yes. A. What will be done after the engineer's report is issued will be to try and settle this thing on a peaceful and harmonious basis. We will sit around the table, and, of course you know, any settlement is always the result of a compromise?

Q. That is right. A. Sit around the table, take everything into consideration, talk things over part by part and piece by  
569 piece, and arrive,—or, at least, try to arrive at what would be considered a fair and equitable settlement,—something that is fair to the construction company, which is The Valier Company,—or, rather The Valier Company is the successor of the various construction companies,—fair to them and fair to the water users. Now then, if the railroad is abandoned, why, so far as the turn-over is concerned, that, as one of my good friends in Valier says, "Puts a plumb different angle on the situation." It brings into the picture the proposition that I just mentioned about



a large part of the project reverting to dry land. Now, I have had for a long time a map of the Valier Irrigation Project that was put out years ago by the Valier Farm Sales Company. I run onto it here some time back. It was a,—it was in a tin box. I don't know why I kept it in there, but there it was, and on that map it says, "The range,—"

Q. (Interposing:) Is that the map? A. That is the map. I have had that for a long time; yes. It says here, "The range yesterday and today," and it goes on and says, "A little part of Montana," and so on and so forth,—I don't think it is necessary to read it all, but this is a picture of the range yesterday and today. The range yesterday,—of course, this was all way out here; the Montana Western Railway was not here, and the Great Northern  
570 Railway was way over here, and the main line up here (indicating), and this was range. Well, of course, this goes on to say the irrigation project has been constructed, and so on and so forth, and on this map the Montana,—you will have to pardon me, folks, I nearly done it right then. Ninety-nine per cent of the time we say "Monkey Western," so if I slip and say Monkey Western, I hope you will all pardon me. I understand that it grieves Mr. Atwood very much, and I am sure, Mr. Atwood, that if I make that slip you will graciously forgive me.

Mr. C. E. Atwood: All is forgiven.

A. (Continuing:) Thank you. Well, "The range yesterday and today,"—well, it appears to me in looking at this map if you take this Montana Western Railroad out of here you are going to turn the western part of this project over here (indicating),—I am just speaking of the irrigation project, but in connection with this I might also mention the irrigation project on the Blackfeet Reservation over here where many of our prominent citizens have leases and own land outright, they are also vitally affected by this,—but maybe I had better just speak for ourselves. However, they are affected. It will turn the western part of this irrigation project back to the range as it was yesterday, only, of course, it will be on a modern basis. Here and there they will raise some hay; they will  
571 feed livestock, and in many cases, where it is feasible they will farm it dry. What irrigation will be done will be mostly for hay on a livestock basis. The tillable land, the land that is being farmed, in my opinion, will eventually be dry farm. That is the situation as I see it, and, as I said before, it will throw the burden of the maintenance on the rest of the project which will be unable to carry the burden,—pardon me,—I shouldn't have eaten those onions with that hamburger. The rest of the project will gradually, piece by piece, stop paying maintenance and go more and more onto a dry land basis. You know there is a lot of dry

land farming being done down there, and, as I said before, in my humble opinion it means the eventual death of the Valier Irrigation Project.

Q. The Blackfoot proposition that you mentioned, would you care to elaborate on that as to how it affects those folks? A. I don't know a great deal about that. I believe that Mr. Leech, who farms over there, could throw a good deal more light on that than I could, Mr. Loble.

Q. One other thing: Have you as a citizen of this community and president of this concern, the water users, any consciousness of the fact that the settlement of this country, Valier, establishment of the railroad, the construction of irrigation, was all an integral part, one whole part, one whole object, when it started; is that right? A. You mean the Montana Western Railroad, and all?

Q. Yes. A. Very definitely, as I see it; yes.

Q. The Great Northern Railroad,—you are familiar with the literature you have seen, the Valerian, and other magazines, are you not? A. Yes, sir.

Q. And you know for many years, getting back to the time this country was built up, through newspapers, through advertising, through hand bills, these folks here were invited, and their folks before them who are now gone, to come here and build this community, weren't they? A. That is approximately correct; yes.

Q. And they were invited by the Great Northern Railway, the Montana Western, and The Valier Company's predecessor, were they not? A. Well, I don't know that the Montana Western Railway ever put out any literature.

Q. No. A. But the Great Northern did, I believe.

Q. The Montana Western Railway is a part of The Valier Company,—I think it was testified here they own all of the stock of the Montana Western Railway except five qualifying shares? A. That is what has been brought out in the testimony here; yes.

573 Q. So that if The Valier Company, or its predecessors, way back in the Conrad Company and the other companies,—they have all had the same general interest in the Montana Western Railway as it exists now, and all of them have been parties to bringing these settlers and their descendants here to this community to build it up; is that right? A. That is approximately correct; yes.

Q. And as late as 1928,—I am showing you pictures, "Conrad-Valier Project, Pondera County." You are familiar with the Great Northern sign, the goat? A. Yes; that is the Great Northern goat. I don't know where they got him.

Q. You are quite familiar with the goat? A. Yes; that is right.

Q. Well, in this circular here that we have, if you will glance at that,—as you probably have,—surely the Garden of Eden couldn't have been nicer, could it? A. Well, sir, that looks very nice; yes.

Q. Here you have men standing over big ditches, wonderful cattle, sugar beets, hog raising, turkey raising, homes, and on this side of the sheet is the dam, irrigation project, grain, sugar beets,—you can hardly see that fellow standing there, can you? A. No.

Q. Now, they have testimonials in here, too? A. That is  
574 right.

Q. That the Great Northern put out,—these railroads?  
A. That is right.

Q. Testimonials by different people, some of them who lived here, and some of them public officials of the,—most of them are people who lived here telling about what fine years they had, aren't they? And I have no doubt that they had them. A. Well, if these pictures were taken on the project they must have had them.

Q. And I think they were taken here,—there is no doubt about it, is there? In your opinion? A. Well, I haven't any reason to doubt their word; no.

Q. But in this project, in this circular that the Great Northern got out, there is one thing that is marked I want to call your attention to,—if I can find it, and I will,—here it is: "E. C. Leedy, General Agricultural Development Agent, Great Northern Railway Company, St. Paul, Minnesota,— A. Pardon me. I have got to put my glasses on. My eyes are all right; it is my arms.

Q. Your arms are too short? A. Yes.

Q. That is my trouble. I didn't know that. Leedy put this circular out, apparently, did he not? A. His name is on it.

575 Q. For the Great Northern Railway Company? A. Yes.

Q. And in that circular it says this: "The Valier Land and Water Company owns about thirty thousand acres of improved, partly improved, and wild land, moderate sized farms, for sale mostly at sixty-five dollars to seventy-five dollars per acre. They will sell on easy terms, long time, six per cent interest. The project has convenient transportation with two lines of railway in six towns, Conrad, Fuller,—"  
A. (Interposing:) "Fowler," that is.

Q. (Continuing:) "Fowler, Kedger, Manson, Williams and Valier." That you observe in that circular, do you not? A. Yes; it is there.

Q. I have gotten the old Valierian,—it is falling apart,—but I have one of March 11th, 1910, with the permission of the Examiner I will read just some excerpts from it. The Valierian that I have obtained from the office says: "The Invasion of Valier. Hundreds

are coming every month, and inquiries pouring in from all sections." You see that? A. I see it.

Q. You see in the center of the page the Valier Hotel? A. Yes, sir.

Q. Where the Examiner stays, and I stay, and we all stay. A. That is the Valier Hotel; yes, sir.

576 Q. And the First National Bank, you don't see that any more? That isn't here? A. This is the bank building (indicating).

Q. That is the building,—it is a different bank, however, that is here now than the First National Bank,—the same building? A. Well, so far as I know it is; yes. I should know. I lost some money in it.

Q. All right. You see the big headlines, "Montana, the Land of Aladdin's Lamp?" A. Yes.

Q. You remember as a kid about Aladdin's lamp, don't you? A. They rubbed it, or something.

Q. They rubbed it; yes. Here are pictures of "Come West, Young Man," you have heard that, too? A. Yes; Horace Greeley, he is the guy that said it.

Q. "If you are of the right temperament you can make no mistake," you see that? A. I did that, that is, I came west when I was a young man.

Q. Well, here is the Valierian of February 23rd, 1912,—now throughout that paper we also see interesting things, and there is one excerpt I would like to read,—it is of the same general type I have heretofore read: The Clinton Hurt and Company was selling,—was the sales agency for the Valier Company, was it not,—the old Valier Company? A. That is this here (indicating),

577 Clinton Hurt and Company?

Q. Yes. A. That is what it says; yes.

Q. I quote just this part: "We will show you seventy thousand acres of Montana's choicest farm lands now open to entry under the Carey Act, in forty, eighty, one hundred and twenty and one hundred and sixty acre tracts. Our natural resources unexcelled. We have excell railroad and market facilities." You see that? A. Well, where is it? I want to verify that.

Q. Right here (indicating). A. That is right.

Q. They advertise the railroad? A. That is right.

Q. Now, let me also read to you here this, which will be interesting: "New rates for the Great Northern,——" A. That is "over" the Great Northern.

Q. "Over,—" Mine are worse than yours,——"—on each Tuesday during March and April, commencing with March 12th there will be a one-way settler's rate of \$16.00, St. Paul to Havre, Great Falls,



and intermediate points. Similar tickets from Chicago will be \$24.00. Settlers' rates do not apply west of Havre or Great Falls. On the first and third Tuesday of each month round trip home-seekers' rates of \$36.60 will be in effect from St. Paul to Conrad, with final limit of twenty-five days from date of sale for the return. Daily, from March 1st to April 15th, special one-way colonist's tickets will be on sale, and rate from Chicago to Conrad will be \$33.00, and \$25.00 from St. Paul. The lowest first class rate any day, St. Paul to Conrad,—

Mr. Jardine: Just a minute.

Mr. Loble: I am nearly through.

Mr. Jardine: All right.

Q. (Continuing:)—is \$29.30,—you can see how the rates have gone up,—“and \$37.30 from Chicago.” A. They had already raised them there. I only paid \$14.00 for mine.

Q. Well, having in mind these various things that I have read, state whether or not the colonizing of this community wasn't as the result of what I have described here? A. Well, yes; it was highly advertised, certainly.

Q. And now, after some forty years, what is your view of moving out the Montana Western which was a part of the inducement for people to come in here? A. Well, I will put it this way: I actually and honestly believe that if the Montana Railway,—the Montana Western Railway had not been built it would have been practically impossible to have sold these irrigated lands in this vicinity at prices ranging from \$41.50 to \$61.50 per acre.

Q. All right. And had the Montana Western Railroad not been held out as a means of transportation and an inducement to come here, is it your opinion the settlement of this community would have been a wholly different question? A. It, in my opinion, just absolutely could not have been settled to the extent that it has been without the Montana Western Railroad having been built.

Q. And do you feel now that the abandonment of this railroad, in the light of what we have discussed, is a breach of good faith with the people who came, and the people who are here? A. I think so, yes. I might say when I said if the Montana Western Railroad had not been built, I should probably have said, “The Montana Western or some other railroad.”

Q. Yes. A. You got what I mean?

Q. You bet.

Mr. Loble: You may cross examine.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Seifert, when you talk about the abandonment of the irrigated land on the west end of the project,

you said that if the irrigation was abandoned that it would go to dry land farming? A. To a large extent, in my opinion.

Q. In your opinion? A. In my opinion, of course. What I say is all my opinion.

Q. That, of course, is all you can base your statement on  
580 is your opinion, because what you are giving here is practically wholly opinion evidence. A. That is right.

Q. That is what you yourself judged? A. That is right.

Q. Now, when you say in your opinion this land which has formerly been irrigated would go to dry land farming? A. To a large extent.

Q. To what else would it go? A. It can't go to anything else unless it would be back to the range I spoke of. The rougher parts probably would.

Q. Do you think they would abandon any of the land which had been broken and farmed, farm land under irrigation, back to the range? A. Only the rougher parts, Mr. Jardine.

Q. Well, they don't irrigate very much of the rougher parts, do they? A. No; that is right.

Q. So really the cultivable land on the project,—on this wend of the project, if the irrigation were discontinued on that because of the discontinuance of the Montana Western Railway, it would go back to dry land farming? A. Mostly to dry land farming; yes.

Q. Well, practically wholly dry land farming, wouldn't it? A.

Well, I look at it this way, Mr. Jardine: In some cases, the  
581 fellows that are still operating on a more or less diversified basis,—you know, of course, there always will be some livestock here because there is a considerable amount of rough land here, in conjunction with the other land, and they will run livestock on there, and those fellows are going to raise some hay.

Q. How will they raise the hay? A. They will irrigate to raise the hay.

Q. That wouldn't be abandoning the irrigated land, would it? A. Not entirely.

Q. That wouldn't be abandoning irrigated land, but what I am talking about is the land you are talking about being abandoned. The cultivable land abandoned for irrigation purposes practically wholly would go back to dry land farming? A. By and large; yes, not counting the few little hay patches.

Q. I am not counting the hay patches in my statement, Joe, because my statement to you excludes the land on which they put water and raise hay. I am talking about the land that is now irrigated and which they abandon irrigation on? A. And which has been raising grain?

Q. Land that has been under cultivation; and that land would go back pricically wholly to dry land farming, wouldn't it? A. That is approximately correct; sure.

Q. Now, on dry land farming the crops they raise are  
582 grain crops? A. Yes.

Q. Wholly grain crops on dry land farming? A. Well, it seems that generally speaking that is correct, but in view of what appears to be ahead,—and I am referring to acreage allotments, it appears that considerably acreage again will be put into erested wheat. You saw what happened before when we had acreage allotments.

Q. Well, that depends on what happens in the future? A. Yes.

Q. That would not only affect this area, but would affect other dry land areas all over the state of Montana, generally? A. Oh, yes. Generally, yes.

Q. But so far as the present situation is concerned, it would all go to raising wheat, wouldn't it? That is all they raise here on dry land, isn't it? A. Wheat and barley.

Q. Wheat and barley? A. And mustard, and some flax.

Q. Yes; that is right. Grain crops? A. Grain crops cover it all, but mustard. I don't know whether mustard would be called a grain crop or not.

Q. Those same grain crops would have to be transported from the dry land to Conrad? A. Yes, sir.

583 Q. Even though the Montana Western was not here, that is, either Conrad or Valier, and transported from Valier through trucks to Conrad? A. Oh, yes, it would have to be transported.

Q. Joe, if the situation were that truck operators were ready, willing and able to haul grain out of Valier as cheaply as the Montana Western hauls grain from Valier to Conrad, the effect of the abandonment of the Montana Western would be very small, wouldn't it? A. But I haven't heard anybody say they would haul it as cheap as,—

Q. I am not asking you that, Joe. I say, assuming the fact to be,—and I am not saying it to be a fact,—I am saying assuming it to be a fact that they will transport grain out of Valier to Conrad, or to other points, as cheap as grain is transported now from Valier to Conrad now over the Montana Western, the abandonment of the Montana Western would have very little effect on Valier, wouldn't it? A. Well, from that angle, why, that would seem to be approximately it; yes.

Q. And actually over ninety-one per cent of the incoming,—of both the incoming and outgoing crops out of this territory in Valier for the last five years, at least, have been grain crops; so there is

only less than nine per cent of outgoing and incoming traffic that would be affected; isn't that so,—assuming my statement is correct? A. Assuming your statement is correct, that would be approximately it, sure.

Q. And you know, of course, Joe, that during the last ten or fifteen years there has been a terrific increase in the handling of various products through trucking rather than the using of the railroad; don't you? A. Well, that is approximately true, due to the fact the railroads have been gradually pricing themselves out of the market.

Q. Well, that may be true, but the fact is that trucks are taking the short hauls away from the railroad, aren't they? A. Yes.

Q. You see, in driving,—or in Conrad every day you see the big oil tankers coming down over Highway 91 between the north fields and Great Falls, don't you? A. Yes, and it is a sin, and a shame and a crime.

Q. But they are doing it, aren't they? A. They are; yes.

Q. And the reason you say it is, is because of the condition of the road, and what they do to the road? A. Yes.

Q. As a matter of fact, that road was built, I think, a sixteen foot road,—maybe eighteen,—about twenty or twenty-five years ago, and was never built to handle that sort of traffic, was it?

585 A. Yes, and by the same token, just think what will happen to this beautiful road, this beautiful highway you have east out of Valier here when they start hauling those heavy loads over it.

Q. Well, do you know the construction of that road? A. Well, I watched it quite closely; yes.

Q. Do you know that three or four years ago there were eight or nine inches of gravel laid on that road? A. Yes.

Q. And before it was fixed this last time there was ten inches of gravel put on that road? A. Yes; I know that.

Q. And it was rolled,—wet down and rolled, wasn't it? A. Yes; it was.

Q. And it is a twenty foot oiled surface highway, isn't it? A. That is what it is.

Q. And, do you know of any better road around this part of the country that the road between Conrad and Valier? A. Yes.

Q. Where? A. The stretch from Vaughn this way, that is a better road.

Q. From Vaughn up until.— A. Oh, for a distance of approximately,—well, it is up to Ole Gunderson's farm.

586 Q. Up to that corner? A. Yes. I think you will agree with me that is a better stretch of road.



Q. I think that is probably a wider road than this one. That is the only one I know of in this country, myself? A. Yes.

Q. Now, it would be rather unusual, don't you think, Joe, if the farmers here would abandon,—on the irrigated-land would abandon raising crops where they are sure of getting a crop with the use of irrigation, and go to dry land farming and raising the same kind of a crop, that is, grain crops? A. Say that again, please.

Mr. Jardine: Will you read the question, Mr. Reporter?

(Pending question read by the Reporter.)

Q. (Mr. Jardine, continuing:) That,—that is, because of the abandonment of the Montana Western? A. The answer to that question calls for another question, as I see it. What assurance have we,—in the event of the abandonment of the Montana Western, what assurance have we that we are going to have permanent truck service at the same price the Montana Western is giving service for now? What assurance have we?

Q. Joe, I am not going into that point at this time because I am not testifying, but what I am getting at is your own statement,—I am not taking my statement,—your statement on the witness  
587 stand, that is, that these present farmers, who are practically all raising grain at the present time for delivery to the market would abandon irrigation and go into dry land farming, and they would be raising the same kind of crops, grain crops? A. Well, that brings up another situation that I had in mind while ago. At the present time we are raising grain crops, Mr. Jardine. You know, and we all know, that before World War II, the entire project was gradually working to a diversified type of farming, sugar beets, cattle feeding, a lot of alfalfa hay was raised, hogs, and other various diversified crops, and then World War II came along, grain prices went up, and naturally everybody dropped their diversification and diversified program and went into the business of raising grain. Now then, we have reached the peak, apparently, of grain prices; prices are again coming down, and there are again definite signs of a return to that diversified type of farming, as evidenced by the interest that is being taken by the sugar beet factory, for instance. Now, in the matter of sugar  
beets, as a long term proposition on almost any successful irrigation project you want to examine and look into, the raising of sugar beets, and of course the feeding of livestock and all the other various processes and industries connected with it, are a very important part of the farming on that irrigation project. And we will  
588 take sugar beets, for instance, it is my considered opinion that it is impracticable to haul sugar beets by truck from this end of the project way down to the railroad, and, on the

other hand, I don't think that will be helped by the building of a factory here, because no factory will locate here, way off the railroad. Therefore, it puts the irrigation project permanently into this type of farming that we are carrying on now, and which experience over a long term of years has proven that on an irrigation project is not practical. It is practical and feasible now on account of the abnormal price of grain, which has made almost any kind of grain farming profitable, but, as I say, as prices get back to normal, it will be necessary for these irrigation farmers, whose costs are higher, to diversify and get into a type of farming that will pay out better, and from that standpoint, why, it calls for instance, for the raising of sugar beets, which in my opinion, is impracticable without a railroad up here. That is one thing.

Q. Without a railroad, unless trucks can replace it? A. Unless trucks can replace it; yes, and the sugar beet man,—I forget his name,—has testified that except under certain favorable conditions where there is no rail haul connected with it, why, they have trucked beets up to,—what was it?—twenty-five miles, I believe.

Q. Where they truck them from the farm into the factory?  
589 A. Direct to the factory, and, of course, we haven't any factory.

Q. That is true enough. That wouldn't explain,—while he made that statement, it wouldn't explain why they couldn't still truck them to a place where they load it in the cars and take them to the factory? A. Well, if it is close enough to be practical, I suppose it could be done; yes. The beet dump would be located on the railroad,—is that what you mean?

Q. What is that? A. The beet dump; it would be located on the railroad?

Q. That is right. A. Yes.

Mr. Jardine: I think that is all.

Mr. Loble: Thank you, Mr. Seifert.

Examiner Bernhard: It is around ten minutes after nine. Could we take a short recess now,—say ten minutes?

(A short recess was taken.)

Examiner Bernhard: The hearing will be resumed.

Mr. Loble: Call Walter M. Brophy.

WALTER M. BROPHY, was sworn as a witness, and testified as follow:

#### Direct Examination

Q. (By Mr. Loble:) Will you state your name to the Reporter, please? A. Walter M. Brophy.

590 Q. Your residence? A. Valier, Montana.

Q. How long, Mr. Brophy, have you lived in this vicinity?

A. I bought my first land from Valier Land and Water Company on the 11th day of August, 1914. That will be thirty-five years next month.

Q. And you have been a resident of this locality since that time, have you not? A. Yes, sir.

Q. Have you ever occupied any public position in this county?

A. Well, yes, I did. I was county commissioner.

Q. And you are well familiar with this county, its problems and its resources, are you not? A. I think so, fairly, yes.

Q. Now, Mr. Brophy, you came here,—state where you came from to locate here? A. I came from Kansas; Sedgwick, Kansas.

Q. And had you heard about this country? A. Well, in 1913 the Great Northern Railroad sent a lot of literature into the wheat belts of Kansas, which they knowed this was quite a grain center, and they were trying to get settlers to come to this country, and through the Great Northern's agricultural agents, which Leedy was the head of at that time, was the people who were incidental in getting me to come to this country.

591 Q. And were you visited by representatives of the Great Northern? A. No; not only by letter.

Q. And was literature such of the type we have shown here sent to you? A. Oh, yes, but of course it was printed ahead of that.

Q. Printed even before that? A. Yes.

Q. So in connection with that, and you were induced to come to this country by the Great Northern, did you know that there was a railroad here known as the Montana Western? A. Yes, I think they explained it in their letters it was one of their branches which was operated under a different name, which they was guaranteeing to the settlers, I think, by the literature, that there would always be a railroad there.

Q. In other words, you felt that the railroad was a vital and integral part of the whole thing, did you not? A. Yes, sir.

Q. And would you have come to a country that was twenty-five or twenty-six miles, or twenty miles from a railroad? A. Oh, I don't hardly think so, because I had children who had to be in school, and I had to get close to civilization.

Q. Now, who got the first elevator site, as far as you know, at Williams? A. Well, I got,—I secured the second site. The

592 Inter—I can't say the name,—but I secured the second site there for the Equity elevator in 1916.

Q. Is that the same site the gentlemen testified about here? A. Yes; that is the same elevator. It was built by the Farmers in 1916.

Q. And it is now the International? A. Now it is the International.

Q. Was Williams named,—was the place of Williams named after a man? A. I couldn't say. I have just forgotten.

Q. Well, when you got the elevator site there, from whom did you get it? A. We had to get the site at that time from the Great Northern Railroad. They told us that they owned,—we was told,—which they did,—that they owned the ground. They didn't own the rolling stock, but they owned the ground, so we had to secure it from the Great Northern Railroad. It is a matter of record. I think it was filed in Teton County in 1916. I don't know whether it has ever been transferred to our own county since then or not, but I think it has, because when this company bought it about six years later,—I think in 1922 or 1923,—they was pretty careful to see that we had a lease.

Q. Well, how much were you paying for the lease? A. I couldn't say, but it was very little.

Q. A dollar a year? A. I think it was maybe something like that. It wasn't very much.

Q. You don't know how long it ran for? A. Well, it was supposed to be ninety-nine years, or something like that,—it was less than a hundred years.

Q. And that isn't up yet? A. No; that isn't up yet.

Q. Having in mind the country here, do you agree with what has heretofore been said, that it is one of the best agricultural countries that there is in this state? A. Why, I think so.

Q. And what have you to say as to whether or not the maintaining of the railroad, the Montana Western, is essential to the well-being of this community? A. Well, I am just telling you what I and my son and son-in-law have decided: We own almost eight hundred acres of irrigated land, and we have decided if the Great Northern and the Montana Western wants to take the railroad away from us, why, we will no longer pay any water maintenance, because I have been a sugar beet raiser. I have had,—for over seven straight years I produced over one hundred and twenty acres, on which I averaged almost thirteen tons per acre in the seven years, which is considerable beets. I produced over one hundred  
594 thousand tons which was shipped. In fact, I shipped,—

raised more beets than all of the rest of the community in those seven years combined that went to the Great Northern, and we enjoyed it,—I enjoyed it. I fed steers out there with my sugar beet tops, and we cleaned our irrigated land up at that time, but we was forced to quit in 1944, and 1945 we didn't plant. We just couldn't secure any help, so it has been really quits ever since. We were waiting for some new invention,—some machinery that would



take care of those beets so we wouldn't have to depend upon Mexican labor, and I think every man in this city will bear with me that I partly made a success producing beets, and they know that the ground I raised beets on that I doubled my yield on my wheat following the beets, and we cleaned it up of wild oats and so on,—put it under diversified farming. And if we lose the railroad, I am well aware we cannot truck beets twenty miles successfully, so our irrigation will be abandoned, along with the railroad.

Q. State whether or when you came here years ago from Kansas to help build up this country and colonize it you felt that good faith required that railroads that were here to remain here? A. Yes.

Q. You stayed, didn't you?

595 Q. And you expect them to stay? A. Yes. I am glad I stayed.

Q. Now, you stayed through tough times, too, didn't you? A. Oh, yes; sure.

Q. Mr. Brophy, what do you think,—I will withdraw the question. I think I asked you this question in a different way, but so it will be in the record I will ask you: In your opinion, public necessity and convenience requires that this railroad remain, does it not? A. Oh, yes; sure.

Q. You recall Mr. Atwood testified here, I believe, substantially the other day to this effect: That it wouldn't be practical to operate this railroad on a three times a week basis,—I believe he testified to that. Did you hear him? A. Yes, I think he did; yes. That is the way I understood it.

Q. At that time state whether or not you did not recall to him and to Mr. Jardine, the attorney here, and myself, that in 1938 at another hearing involving the same railroad this same question had come up? A. Yes, sir.

Q. They did not remember the hearing? A. No; I guess they didn't.

Q. At that time Mr. Bonner was attorney,—the present Governor was the attorney for the railroad, wasn't he? A. Yes.

596 Q. And the hearing was held where? A. At Conrad, in the old courthouse.

Q. And Mr. Jardine represented the,— A. (Interposing:) As near as I remember, I think he did. The Valierian said he did. I know Bonner was there, and I know the hearing was held.

Q. As a matter of fact, you could have won a little side bet here yesterday, couldn't you? A. Oh, yes, but I didn't want to take a good old friend's money.

Mr. Jardine: That was today, wasn't it?

The Witness: Well, whenever it was, it wouldn't make any difference.

Q. Well, I have a high regard for a man who won't take a hundred dollars away from an attorney? A. No; I won't take it. I am one of his clients. He has done work for me and I was afraid maybe he would charge me too much.

Q. You used very good judgment. A. Yes.

Q. Mr. Brophy, at that time at that hearing state whether or not you recall Mr. Atwood testifying that this road could be operated successfully at three days a week? A. Yes; sure he did. I remember that; yes. I wouldn't want to go into details too  
597 much on that, because you know, after all, my recollection is not too good, but I do remember they wanted it three days a week, and they showed us where they could operate on three days a week and save money, but the thing I kicked on at that time,— I was county commissioner, and I had to go to the commissioners' meetings sometimes from Williams on the train. We didn't have any roads those days. The other commissioner lived out west and he usually beat it into Valier someway, and he got the Montana Western from Valier into the county seat; so the commissioners sent me over to protest. They didn't want to lose that three days a week travel. And I did, I went over,—the Commissioners sent me over,— but I knew what they were doing, and I knew that Valier needed the train at that time for hospital work, and they needed it very bad at that time. Today they could get along possibly if they had three trains a week now,—or two, maybe, except just during the busy times, because we have a highway for passenger traffic, but we do need the railroad to haul our heavy freight out.

Mr. Jardine: You may examine. Wait a minute. O. K. you may examine.

### Cross Examination

Q. (By Mr. Jardine:) The hearing that Mr. Loble referred to, you say was in the courthouse at Conrad, and you and I had an argument about it, and I didn't think I was there because I  
598 didn't remember being at a hearing at which Mr. Bonner was present. A. I see.

Q. And that is what I told you today? A. Yes.

Q. But the Valerian and the order of the Montana Railroad Commission shows that I was there, and I was mistaken about it. A. Yes.

Mr. Loble: Were you there?

Mr. Jardine: Yes, I must have been. I have no recollection of it, but I must have been. I couldn't tell you today that I was there.

Mr. Loble: I will bet on Mr. Brophy.

Mr. Jardine: If I had bet my money, and if the record had showed I was there, I would have had to pay him the hundred dollars, and then hope that he would come back to me so I could do his legal work for him.

Mr. Loble: Yes; I know how it is done.

Q. (Mr. Jardine; continuing:) At any rate, at that hearing I think there was evidence to the effect that it would show a saying of about two thousand dollars a month, isn't that what the record shows?

Mr. Booth: We don't have the file with us, Mr. Jardine.

Mr. Jardine: Mr. Casey, you have something?

Mr. Casey: I am in the same fix you were. I forgot I was 599 there.

Mr. Jardine: Maybe I saw it in the newspaper. I saw it some place, something with reference to it.

Examiner Bernhard: When was this hearing you are talking about?

Mr. Jardine: What?

Examiner Bernhard: I say, when was this hearing you are talking about?

The Witness: It was August 3rd, 1948.

Mr. Jardine: At Conrad, Montana.

Mr. Booth: I can give you the docket number on it, if you want it? The case, Mr. Examiner, was a case before the Railroad Commission of the State of Montana relative to curtailment of train service.

Examiner Bernhard: I don't see the materiality of it. I am not calling for it.

Q. (Mr. Jardine, continuing:) Mr. Brophy, you were, as I recall, one of the original sugar beet growers in this community? A. That is right; yes.

Q. And, I think, have probably raised more sugar beets than anybody else in the whole community? A. Well, I think I shipped the most tons, combining all the rest of them together.

Q. Over a long period of years? A. Yes; I raised them 600 for eight years, straight.

Q. And you raised them successfully? A. I think I did. I made money by it.

Q. And that is what you judge the successful raising of sugar beets by? A. Yes; that is right, and you want to remember I always fed about a hundred and fifty head of steers—I and the boys did out there, my son and son-in-law. We fattened steers, too, in the winter time.

Q. Off the beet tops? A. Off the beet tops; that is right.

Mr. Jardine: I think that is all.

Mr. Loble: Thank you, Mr. Brophy.

Examiner Bernhard: I would like to ask a question about these beet tops that have been referred to here as cattle feed.

Mr. Loble: Just a minute, Mr. Brophy.

Examiner Bernhard: Do you dry them?

The Witness: Well, we shock them up and they sort of cure. In the winter time the crown will get like a gum drop, be just like sugar, and that is what the cattle are crazy for,—very highly fattening.

Examiner Bernhard: How many weeks can you keep the beet tops?

The Witness: Oh, they will keep until spring, along in April, very nearly, in this country.

601 Mr. Brophy, I have a note here to ask you something. Would you mind coming back to the witness chair?

#### Redirect Examination

Q. (By Mr. Loble:) Say whether or not you think the long-run, diversified farming is necessary for successful irrigation farming? A. Oh, sure, diversified is necessary.

Q. Now, I believe that the record will show that the taxes on this railroad,—the taxes that they pay,—is about four thousand dollars a year, if I am correct. Do you recall if it was substantially that? A. Yes, I think it will run around about thirty-five hundred. The Great Northern pays about forty-two thousand in this county, or did at one time. I am only speaking of the time when I was in the county commissioners.

Q. The abandonment of the road would mean the loss of that taxable value, would it not? A. Yes. Another thing we would lose, we would lose our high classification. The State Board of Equalization then would have to re-zone our county and put us in a lower classification, because being so far from transportation, why, they would class us,—we would have a little lower tax to pay. The county would otherwise lose an awful lot of valuation from the farmers, and make the Great Northern pay that.

602 Q. That would be all right, wouldn't it? Now, let me ask you something about the roads here. If the railroad were abandoned and you used these roads here with heavy grain trucks, on top of what else happens, what do you think will happen to the roads? A. No, we all know Sheridan, the road man. My boys out there on the ranch,—we have trucks that will hold about two hundred bushels of wheat,—and last fall he kicked on them. He said, "You have only got six tires on them,"—they are ton and a half trucks, you see,—he says, "If you are going to haul two



hundred bushels or over, you ought to have on more tires. You got to have them," and that was on this highway right here.

Q. Now, the east roadway is secondary construction, not primary, isn't it? A. No; this is just a secondary farm-to-market road here.

Q. So that if there are approximately seven hundred and fifty railroad cars that go out every year,—and that is what was estimated,—over this road, the number of trucks that would go out would at least be three or four times that much, would it not, to haul that same load, would it not? A. Oh, yes; probably more.

Q. Probably more? A. Sure.

Q. You would have a parade of trucks that it would take to haul out eight hundred thousand bushels of wheat? A. The  
603 road would be worn out before you ever got the first crop delivered.

Mr. Loble: That is all.

Mr. Jardine: No further questions.

Examiner Bernhardt: You may be excused, Mr. Brophy.

(Witness excused.)

Mr. Loble: Call Mr. Egan.

EUGENE C. EGAN, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. Eugene C. Egan.

Q. And you reside where? A. Five miles east and one mile north of Valier.

Q. And you are a farmer? A. Yes, sir.

Q. And about how much ground do you operate? A. Oh, approximately a thousand acres.

Q. And is that grain land,—you raise grain? A. Well, yes.

Q. And anything else,—are you in any other line of business in farming other than grain? A. As a normal practice we grow grain and hay, sugar beets and peas.

Q. You are the president of the Valier Community Club,  
604 are you not? A. Yes, sir.

Q. And that club is what it has been described here by Mr. Swanson and others, is it not? A. Yes, sir.

Q. And you are vitally interested in that Club, are you not? A. I try to be.

Q. And that organization is vitally interested in this community, is it not? A. It always has been.

Q. And in your capacity as president of the Club I will ask you whether or not you have talked to many, many people in this com-

munity and in the country about the abandonment, or the proposed abandonment of this road? A. Yes, sir.

Q. And what is your view, and that of those with whom you have talked as to what it means to this community? A. From the men I have talked to, they are all wondering how they can keep on operating if they have to operate without the railroad. Some said, "Well, we will have to double our storage so we can go on raising grain, in the winter time when we have time. Some said, "We wouldn't want to load ours on a truck without any way to measure it, or weight it, and turn it over to a trucker, without weighing it, and having it weighed at some distant point, as they would if it went straight through to Minneapolis. We just don't want to do that."

605 Q. In your opinion, does public necessity and convenience require this railroad be maintained? A. I don't think there is any doubt about it. I would say yes.

Q. The type of agricultural products here are such,—in the past, and such as you may reasonably expect in the future, such as beets, and the like, that the elimination of the railroad is, in your opinion, the death knell of this community, so far as the raising of sugar beets and the like? A. It is the death knell, as far as I am concerned, and I think that is the opinion of most of the people I have talked to.

Q. You raise livestock, too, and have in the past,—and sugar beets? A. No; I haven't raised them. I have bought feeders in the fall of the year and fed sugar beet tops to them.

Q. You bring the cattle in to feed, and then send them out? A. Yes, sir.

Q. The importance of retaining this railroad is such that you as president of the Valier Community Club feel it is a matter of vital concern to every man, woman and child in this community, do you?

A. Every one I have talked to are of that opinion; yes.

606 Mr. Loble: You may examine.

#### Cross Examination

Q. (By Mr. Jardine:) You say you ship your cattle out,—you ship them by rail or by truck? A. We make a practice of shipping them by rail. We have shipped them by truck, also.

Q. You shipped them from Valier by rail? A. Yes, sir.

Q. And I think you said you yourself haven't engaged in the sugar beet raising; is that right? A. Yes, sir.

Q. But you intend to in the future? A. Well, what was your question before that?

Q. I thought you said you yourself had not engaged in sugar beet raising? A. No, sir; I have engaged.

Q. You have? A. Yes, sir.

Q. I misunderstood you, is all. And you intend to start in raising them again; is that correct? A. I have been thinking of it; yes. In fact, I want to get back into raising sugar beets and feeding cattle.

Q. Have you any program in mind for next year with reference to that, or is it further in the future? A. Well, there has been a lot to be decided, as before, when it is more profitable to grow  
607 sugar beets than to grow wheat, or when the Triple "A" tells us we have so many acres of wheat to grow, then we have to start looking for something else we can grow.

Q. Well, that is the situation at the present time,—you are trying to determine which is the more profitable crop? A. That is correct.

Q. You intend to grow the crop which at the time is going to be the more profitable during the year in which it is raised? A. That is correct.

Q. Whether it is sugar beets, or wheat, or peas, or,— A. Beans or peas or carrots, or whatever it might be.

Q. You don't raise any beans or peas, do you? A. We have raised peas; yes, sir.

Q. In the immediate past? A. Well, I couldn't tell you what year it was. It wasn't so long ago.

Q. They have been pretty much abandoned, though, the raising of beans and peas on the project? A. Yes; one reason for that was the weeds are so bad. Now, we have a spray that they say you can grow peas profitably by spraying. If we can, it will be a profitable crop, that is, when the Government tells us they need only so many bushels of wheat.

608 Yes. A. And they allot us.

Q. That is, if any when they put a limitation on the number of acres of wheat that you can grow. A. Or the price goes so low you can't profitably grow it.

Q. One or another of those things will cause you, too, to look for another crop? A. Correct.

Mr. Jardine: That is all.

Mr. Loble: That is all.

Examiner Bernhard: You may be excused.

(Witness excused.)

Examiner Bernhard: We have about ten minutes more

• Mr. Loble: I will call Mr. Swank.

DEVÖE C. SWANK, was sworn as a witness, and testified as follows:

Direct Examination -

Q. (By Mr. Loble:) Will you give your name and address to the Reporter, please? A. DeVoe C. Swank.

Q. And your residence, please? A. Valier, Montana.

Q. In what business are you engaged, Mr. Swank? A. Lumber and hardware.

Q. State whether or not your business uses the Montana Western Railroad? A. It is almost a necessity. We do use the railroad.

Q. And do you use it almost exclusively? A. We use it within ninety-five per cent of all transportation that comes in, is over the railroad.

Q. Is your concern a retail or a wholesale concern? A. Retail.

Q. What type of commodities do you ship in by rail,—ship in over this railroad? A. Practically all hardware items come in over the railroad, and nearly all building supplies, particularly lumber and cement.

Q. State whether or not you are the only concern in the town that engages in this business extensively. A. No; there are two of us at the present time.

Q. There is another concern? A. That is right.

Q. State whether or not public necessity and convenience requires the presence of this railroad and its operation. A. Well, I think we have things to sell that are vitally necessary to the community. Cement is hard to haul from very distant points. It costs money to transport it by truck, approximately twenty cents a hundred more than it would by rail, and in lumber, where we buy it on the west side of Montana the freight rate would be excessively high by truck.

Q. In other words, do you think you could continue to operate your business here that you have built up, without the railroad being here? A. I really don't,—I think it would be an awfully tough job.

Q. If you did, the people here who purchased from you would necessarily have to purchase commodities from you at a greatly increased rate, would they not? A. Particularly on masonry supplies, there would be a matter of twenty cents a hundred difference.

Q. How long has your business been here? A. I think the business itself has been here since Valier. I have operated it for the past three and one-half years.

Q. What is the name of the business? A. DeVoe's Builders' Service.

Q. And it has been here since the beginning of time, so far as you know? A. As far as I can tell.

Mr. Loble: That is all.

#### Cross Examination

Q. (By Mr. Jardine:) You operate a retail lumber yard, do you?  
A. Yes, sir.



Q. And you ship all your lumber in, do you, by rail? A. Nearly all of it.

611 Q. In carload lots? A. In carload lots.

Q. And is that true of most of the lumber that is supplied to the town of Valier? Is it shipped in by rail? A. It has been.

Q. During the time you have been here? A. That is correct.

Q. That is, three and one-half years? A. Yes.

Q. A big percentage of the lumber that has been shipped in to Valier has been shipped in by rail? A. Nearly all of it.

Q. Nearly all of the lumber. Do you ship anything else in in carload lots? A. Cement.

Q. Cement and lumber; is that right? A. Yes.

Q. Is there anything else? A. Wall board, that is, building supplies.

Q. You ship that in by carload lots? A. Nearly all of it; yes.

Q. And the balance of your shipments are less than carload lots?

A. That is right, L. C. L.

Q. And your L. C. L. freight,—of course, there is no  
612 trucking service into Valier? A. No; there isn't.

Q. And if the railroad were abandoned, so far as that L. C. L. freight is concerned, you have no way of knowing what the cost of transportation would be, if there was a trucking service to transport it,—what the cost of that service would be to you? A. Not on L. C. L. shipments; no.

Q. But on trucking of cement into Valier you would be paying twenty cents a hundred more by truck than if it were shipped in by rail? A. That is approximately correct.

Q. And do you know anything with reference to the lumber? A. We usually buy our lumber in Libby, and they do not load trucks; so it would still have to come on railroad cars to a point as close to Valier as possible.

Q. And then transport it from there to Valier? A. On trucks; yes.

Q. Can you tell me how many carload of lumber you ship in a year, approximately? A. About five.

Q. And cement? A. I believe it was eight last year.

Mr. Jardine: I think that is all.

#### Redirect Examination

613 Q. (By Mr. Loble:) The cement that is used by the Valier Water Company for construction and maintenance of its structures on its irrigation system is furnished by whom? A. I have furnished them since I have been here.

Q. And you transport it over the railroad, do you not? A. That is right.

Mr. Loble: O. K. That is all.

Mr. Jardine: That is all.

Examiner Bernhard: The witness may be excused.

(Witness excused.)

Examiner Bernhard: Our time is about up. I think we had better adjourn. Will nine o'clock tomorrow morning be too early?

Mr. Loble: Fine.

Mr. Jardine: Well, I would rather have it nine thirty in the morning. I have to go to Conrad and come back.

Examiner Bernhard: Is there any doubt but what we can finish tomorrow?

Mr. Loble: I don't want to inconvenience counsel, but I would like to start as soon as I can. I have quite a number more witnesses. I would like to finish tomorrow, and I know you would.

Examiner Bernhard: I am willing to run tomorrow evening, also, if necessary.

Mr. Loble: If it is an inconvenience to counsel, nine thirty  
614 is all right. I think we could run through our witnesses from then on and finish by afternoon some time, Mr. Examiner.

Examiner Bernhard: Then we will adjourn until nine thirty tomorrow morning.

(An adjournment was taken from ten p. m., Tuesday, July 12, 1949, until nine thirty a. m., Wednesday, July 13, 1949.)

High School Gymnasium,  
Valier, Montana,  
July 13, 1949—9:30 A. M.

Met pursuant to adjournment of Tuesday, July 12, 1949.

BEFORE:

C. A. BERNHARD, Examiner.

Appearances:

(Same as on preceeding day, July 12, 1949.)

620 Examiner Bernhard: The hearing will be resumed.

Mr. Loble: I would like to recall Mr. Swank, if I may, for one question?

Examiner Bernhard: Very well.

Mr. Loble: Come forward, Mr. Swank.

DEVOE C. SWANK, was recalled as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Mr. Swank, you were heretofore on the witness stand, were you not? A. That is right.

Q. And you are the operator of what merchantile business? A. DeVoe's Builders' Service.

Q. And you have testified in reference to that business, is that right, at the hearing yesterday? A. Last night; yes.

Q. There is one question I wanted to ask you: Will you tell us the amount that you pay in freight,—have paid in freight to the Montana Western, in the operation of your business, the total amount for each year, starting in 1946, and I have asked you to make a total of it? A. I have a memorandum here that is very close. In the year of 1946 was \$4,955.10; 1947, \$6,644.53; 1948 was \$6,257.32; 1949 to date is \$3,935.06.

621 Mr. Loble: Thank you. That is all.

Mr. Jardine: No cross examination.

Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: Call Mr. Crawford, please.

TED R. CRAWFORD, was sworn as a witness, and testified as follows:

# Direct Examination

Q. (By Mr. Loble:) State your name, please. A. Ted R. Crawford.

Q. And where do you live, please? A. Three and a quarter miles east of Valier.

Q. And you are a farmer? A. I am.

Q. About how much acreage do you operate? A. My sons and I operate twenty-five hundred acres.

Q. This is grain? A. Mostly grain.

Q. Are you a shipper over the Montana Western? A. I am.

Q. And are you a user of the elevator facilities in Valier? A. I am.

Q. About how much grain would you say you produce a year, roughly? A. Average around thirty thousand bushels.

622 Q. State whether or not, in your opinion, public necessity and convenience exists for the operation of the Montana Western Railway? A. Under present conditions it does, very much.

Q. Are you a member of the Valier Community Club? A. I am.

Q. And you are the Chairman of its Good Roads Committee? A. I am.

Q. Will you tell us from your observation with the facts about the present highway, whether it is a Federal highway, or whether it is a feeder road? A. No; this road running east of Valier is what they call a secondary road, a feeder road, and we were in Helena in the past few days, and the State Engineer stressed that point very

much again, when we were talking about roads. We were interested in this road, in getting it completed through to the other highway, and the specifications of building a secondary road, or feeder road, are a much cheaper type of construction, a lighter constructed road, than when they build a Federal or State highway, or main highway. Mr. Jardine brought out yesterday that this road was a better road than No. 91, I agree with him, but 91 is twenty years old, and it is not standing up. Our road is a new road out here. It hasn't had hard use. If we were to give it the use with the heavy trucks, like the main highway, it would be in the same condition in a  
623 matter of time, because the engineer doesn't put up those roads to stand that kind of work. He told us that in the future construction would be heavier, that they have changed the specifications of all roads, which we know they have to do for the reason they are not standing up.

Q. The difference between a Federal highway and a feeder road of this kind, the responsibility for the maintenance of this road is in the county, is it not? A. In local hands.

Q. In other words, Pondera County has to maintain it? A. On top of that, Pondera County has no equipment to maintain that type of road; have no oiling equipment or repair equipment for that type of road.

Q. If you would substitute the number of trucks that would be necessary to haul an average of seven hundred and fifty earloads a year over this highway that we are referring to, what is your view as to what would happen to it? A. Well, under high speeds and heavy loads this road wouldn't stand up. We know that from past experience.

Q. What have the citizens and you folks in the Valier Community Club done as citizens in the past in the matter of taking care of this road? A. Well, we have done almost everything we could think of.

We ever donated money to help build it, and worked as in-  
624 dividuals and hauled gravel, donated our trucks and time, and we are still doing it, and trying to keep the road up so the State will eventually give us some more road, because if we don't maintain what we do have they will cut us off in the future for all other roads; and I think that is one of the most important things is to maintain the standard on what we do have. If we lose the good will of the state by not maintaining what we do have we will never get any more in this county.

Q. What would be the advantage to this county if the State would undertake to connect,—is it 91, with what other? A. 89.

Q. 91 and 89 are both Federal highways, are they not? A. Yes, sir.



Q. And if they were connected by black-top it would be an advantage for tourists traveling into Glacier Park, would it not?

A. Very much so, but it would still be a tourist road, or a car road. It is not a highway for truck lines under the specifications it has been built.

Q. It is not hard top? A. It is hard top half way, but what I mean is they didn't look forward to heavy trucking under those specifications.

Q. Having in mind the amount of work that the citizens of this community have done already, and are doing all the time  
625 to maintain this road you have described, what would you say as to the ability of your folks to keep it up should the road be utilized for trucks in the equivalent of seven hundred and fifty railroad carloads a year? A. Well, money for roads in this county is limited, and it has to be used generally all over the county, and it would be impossible to take all our tax money and use it on this one stretch road, because the rest of the citizens wouldn't stand for it. They would have to have an equal share. There is a very limited amount of money we can spend on this road for maintaining it.

Q. Would the result be that in addition to whatever additional expenses or inconvenience you would have in the operation of hauling grain by trucks, it would fall to your lot as citizens and individuals to try to keep up the road? A. Yes; it would.

Q. In reference to road limits, in this state it is quite common, is it not, particularly in the spring of the year and at other times when a road starts to break up, or there is danger of it breaking up, to impose what they call "road limits," is that right? A. That is right.

Q. And for the benefit of the Examiner a road limit is that the Highway Commission will say that a certain load shall not go on  
626 a certain road with more than a certain tonnage, and that tonnage must have a certain number of tires under it; is that right? A. That is right.

Q. And do you know from your inquiry at the State Highway Commission that this road would be protected by load limits? A. Oh, yes, it would be. The sad part is they have no checking station here. It would be hard to get a check on it.

Q. If load limits were placed on there you would have a situation somewhat similar to what was described by one of the witnesses last night, where he had about two hundred bushels on, they said he had to have more tires under it; is that right? A. That is right.

Q. And as a farmer, do you think,—can you afford, or anyone else you know of, afford, to have trucks so equipped that they could

meet the conditions of the road limits at all times? A. Not at all times; no.

Mr. Jardine: You may examine.

### Cross Examination

Q. (By Mr. Jardine:) You are acquainted, Mr. Crawford, with Mr. Powell, who finished the highway, aren't you? A. I am.

Q. I mean, personally acquainted with him? A. Yes; I am.

Q. And you visited some back and forth with him, haven't you? A. I have.

Q. You have lived on that road during its construction and repair for a great number of years? A. I have.

Q. And know pretty well from your own personal knowledge the nature of the construction, and what has gone into the road? A. Yes, sir.

Q. And about three or four years ago, isn't it a fact that there was approximately eight to ten inches of gravel placed on the whole of that highway? A. I think in places; I don't think that would cover the whole road, to my knowledge.

Q. Well, there were a number of different contractors that had different contracts on different sections of that road; isn't that true? A. That is true.

Q. And then when Mr. Powell in 1948 took the contract to build, —or complete that road he put about ten inches of gravel on it, didn't he? A. I couldn't say that he put that much. I wouldn't agree to those figures at all.

Q. You don't think he put that much? A. No, I don't.

Q. If that is what the contract called for you would say he didn't, then? A. Oh, if the contract called for that, I would say he did. I didn't read the specifications of the contract.

Q. And after the gravel was put on the road the road was watered and rolled, wasn't it? A. It was.

Q. All the way through? A. Yes.

Q. Packed down, in other words? A. Yes.

Q. Then after it was packed, it was finished with a plant mixed oil, wasn't it? A. Well, the oil was mixed right on the road.

Q. Yes. It was a plant mix oil? A. Yes.

Q. And that was the construction of the road? A. Yes.

Q. The road is a twenty-six foot highway, with twenty feet of oiled road? A. Yes, sir.

Q. And if Mr. Powell says that the road would carry three or four times the weight that the highway No. 1 running north and south from Shelby through Conrad would carry, would you be

inclined to dispute that? A. I would. I would say the  
629 Shelby-Conrad road is not carrying,—

Q. What? A. I would say the Shelby-Conrad road is not carrying what it is supposed to carry. It is just attempting to carry it.

Q. Well, the Shelby-Conrad road was one of the first oiled roads that was constructed in this section of the country, wasn't it? A. It was.

Q. It was constructed about twenty or twenty-five years ago, and the construction was,—a lot of the fill on the road they used horses and fresnoes to put it in, and the construction wouldn't compare with this present road, would it,—I mean with the road between here and the highway? A. I will admit this is a good secondary job out here, but I still maintain it is a secondary road, and it was not built for heavy traffic.

Q. The only road in the vicinity of Great Falls that is built any better than this road, is the road from Vaughn north to connect up there,— A. It is a new type of construction.

Q. That is right. It was built within the last two or three years. A. That will stand up.

Q. Outside of that,—that is the only road in the vicinity of  
630 Great Falls that is as good as the road between here and Conrad? A. That is right.

Q. And the road between Conrad and,—or between Shelby and Conrad and Great Falls, 91, has for a great number of years last past carried exceptionally heavy loads, hasn't it? A. Well, it hasn't carried them, but they have used heavy loads over it. You know the results of that traffic.

Q. I understand. The road, I think, is a sixteen feet or eighteen feet oiled surface, very narrow,—I mean in the old construction it was very narrow. A. Yes.

Q. But they have over a great many years carried heavy loads of oil, big oil tankers with trailers behind them, and constantly over that period of time, winter and summer alike, haven't they? A. Yes.

Q. The Highway Commission, with reference to carrying loads over roads, has authority to limit weight, depending on weather conditions, if they want to; in other words, they can limit the weight to so many pounds per square inch of tire; is that the way they figure that? A. Yes.

Q. And in the spring of the year if roads are breaking up, why, the usually limit the weight to the number of tires; that is,  
631 instead of six hundred pounds per inch, they could reduce it to three hundred or two hundred. That is the way they regulate it, isn't it? A. That is right.

Q. And this road, of course, is under the jurisdiction of the Highway Commission, isn't it? A. Which road is that?

Q. This road between Valier and the highway? A. Well, it might be under certain conditions, but it is up to the county and the county commissioners to look after the welfare of it.

Q. Well, maybe I didn't make myself clear. I mean so far as apply load limits, the Highway Commission would have the authority to do that? A. I think they would; yes.

Q. The road from Valier west to Highway 89 is gravel, isn't it? A. It is.

Q. And an endeavor has been made to get the same type of construction, or better, from Valier west as this road from Valier east? A. Yes.

Q. In that event it would connect up the two highways that run out of Great Falls to Glacier Park, one through Shelby and Browning, and the other through Choteau and Dupuyer up to 632 Browning? A. Yes.

Q. This road would be a connecting link between the two highways? A. It would be.

Mr. Jardine: That is all.

#### Redirect Examination

Q. (By Mr. Loble:.) That has been a dream for a long time, hasn't it? A. Yes; it has.

Mr. Loble: That is all.

#### Recross Examination

Q. (By Mr. Jardine:.) This road out here was a dream for a long time, too, wasn't it? A. Yes.

Mr. Loble: And it will be a dream again when you get trucks on it.

Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: Call Mr. Brown.

DAVID BROWN, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:.) Will you please state your name? A. David Brown.

Q. And you are a resident of Valier? A. Yes.

633 Q. How long have you lived here? A. Twenty-five years.

Q. Mr. Brown, were you formerly employed by the Montana Western Railroad? A. Yes; I was.

Q. In what capacity? A. Engineer.



Q. How long were you an engineer for them? A. For twenty-five years.

Q. That is, you were a locomotive engineer? A. Yes, sir.

Q. You are an old railroader, are you not? A. Yes, sir.

Q. How long have you followed railroading? In your life? A. About fifty years.

Q. Before you came with the Montana Western you railroaded where? A. For the Great Northern; Spokane, Portland and Seattle; Oregon Trunk,—I worked on the construction of that.

Q. You completed your service with the Montana Western and have now retired, have you not? A. Yes.

Q. How long have you been retired? A. It will be two  
634 years on the first of August.

Q. Are you familiar with the operations,—I assume you are,—of this railroad, having operated here so many years? A. Quite a bit.

Q. Going back, I will ask you whether or not in your experience in working for this road if it was required that repairs of all kinds be performed by the Great Northern Railway Company? A. Heavy repairs; all light repairs I did.

Q. Do you recall an instance where the cost of repairs by the Great Northern was out of proportion to what you as an experienced railroader considered the value? A. I only saw one bill. You see I don't get that close to the office. I saw one bill that came through shortly after I came here,—for this engine, this engine that is here now, No. 10. That bill was what I thought excessive.

Q. That engine, you understand, cost five thousand dollars? A. Yes; I believe they bought it for five thousand dollars.

Q. And the repair bill the Great Northern charged for fixing it was how much? A. Thirteen thousand and something.

Q. It cost more than twice as much to repair it as it did to buy it? A. Yes.—

Q. Was that engine in use for any period of time, or is it  
635 now? A. It is still in use.

Q. Did you observe in connection with the charge made by the Great Northern for repairing that engine a pit charge while the engine was up there? A. Yes, there was. There was a charge, a daily charge, as they called it, for the use of the pit.

Q. How long was the engine up there, about? A. Two or three months, pretty long.

Q. And whether they were working on it or not there was a charge, a pit charge, for it? A. Yes.

Q. What have you to say as to the operation,—daily cost for the use of the gasoline engine? A. Well, of course, the wages of the crew,—you don't mean that?

Q. I understood you to say there was a twenty dollar a day charge? A. That would be rental charge when an engine was rented. That was not a charge of operation; that was a rental charge for the rental of the piece of equipment.

Q. And did you rent them from the Great Northern? A. Always. There was no other place to get them.

Q. What kind of engines? A. We got a locomotive a little bigger than the one we have now; otherwise, there was only one  
636 case of a rented piece of equipment, and that was a gasoline bus. It had a truck motor in it.

Q. Do you consider the rental of equipment like that expensive?

A. Yes; I do. It makes operating costs pretty high.

Q. And did you see any real necessity for renting equipment?

A. We never rented any only when we really needed it, that is, when our own was tied up.

Q. On repairs that were made down in Great Falls by the Great Northern, what have you to say as to the charges there? A. Those are the charges I spoke of. I never saw a bill on that.

Q. You didn't see the charges down at Great Falls? A. No; I never saw them. They came to the office, and Mr. Atwood would be the only one who could tell you about that.

Q. You have hauled over this road a long time, and you know the use to which it is put by the farmers, do you not? A. Yes.

Q. And, in your opinion, is this road necessary for the public convenience and necessity? A. I think it is.

Q. The passenger traffic, of course, has fallen off completely? A. Almost entirely; yes.

Q. But for freight haul, do you know of any better short-  
637 run freight haul than this? A. No; I don't think so.

Q. The community that it taps is a prosperous community, is it not? A. Yes; a lot of stuff produced around here.

Q. This is one of the best communities in the state, is it not? A. I would consider it so.

Q. Both the town itself and the surrounding area? A. The surrounding area produces as good as any place I have seen in the state.

Q. Were you paid,—who were you paid by? A. By The Valier Company.

Q. The Valier Company paid you your salary while you were there, is that right? A. Yes, sir.

Q. You weren't paid by the Montana Western? A. No; the checks were from The Valier Company's office.

Mr. Loble: You may cross examine.

## Cross Examination

Q. (By Mr. Jardine:) The Valier Company's office handles the books for the Montana Western, doesn't it? A. Yes.

Q. And handled the payroll account? A. Yes.

638 Q. And the charges made,—I don't know, but I think your check comes from the Valier Company, doesn't it? A. Yes.

Q. How did it come? Well, it used to come through The Valier Land and Water Company? A. Yes.

Q. But it was a charge against the railroad? A. I suppose they are.

Q. The railroad actually paid it? A. Oh, I guess they do. They have the same treasurer for both outfits.

Q. Yes. And The Valier Company, or The Valier Land and Water Company keeps the records and books, that is, the ledger?

A. And the payroll?

Q. And the payroll account? A. Yes.

Q. And you, I think, said you had retired, have you not? A. Yes.

Q. Now, to go back to the old engine that went on the blink, I think probably a short time after it was bought,— A. This one here?

Q. Yes; this one here? A. They used it for a while. I wouldn't say how long. When I came here they had taken it out of  
639 service and thought it would not be used any more.

Q. But it had been used for some time before that? A.

Oh, yes.

Q. It wasn't in service when you came here? A. No; it wasn't in service when I came.

Q. It was being repaired? A. No; it was tied up here.

Q. Tied up in what is called the roundhouse? A. Yes.

Q. And later sent over for repairs? A. Yes.

Q. When you came here was Tom Parish the General Manager of the Montana Western? A. No; he wasn't.

Q. Who was? Jim Sanders? A. No, Telgener.

Q. Telgener. And who was manager, do you know, when the engine was repaired? A. Telgener.

Q. He was the manager when the engine was sent over to be repaired? A. He was classed as superintendent at the time, I believe.

Q. He occupied the same position that Mr. Atwood does now? A. That is right.

Q. And was Mr. Sanders on the road any time while you  
640 have been here? A. No.

Q. He was superintendent and manager before you? A. Mr. Sanders came to Great Falls with Mr. Telgener when they hired me.

Q. And with reference to renting extra equipment, they only rented that when it was absolutely necessary, didn't they? A. Never that I know of rented any only when our own was out of service, out of use.

Q. There are certain heavy repairs that it is absolutely impossible to do in Valier, aren't there? A. Indeed, there are.

Q. And if something happens to the engine that can't be repaired here, it is necessary to send it down to Great Falls, isn't it? A. Yes, sir.

Q. And that is the only place you can get it repaired, is on the Great Northern? A. On the Great Northern is the only place you could get it done.

Q. And while it is being repaired, if you need another engine the only place you can rent another engine is from the Great Northern? A. Yes.

641 Q. You don't think the Montana Western, while you were in the service, was trying to run up excessive costs for operation, do you? A. Oh, no; I wouldn't consider they were, but the Great Northern always charged plenty on anything you got from them.

Q. You thought when they charged,—how much for an engine a day? A. I ain't sure of it,—twenty or twenty-five dollars a day.

Q. That is for a steam engine? A. Yes.

Q. You thought a charge of twenty or twenty-five dollars a day was an excessive charge? A. Yes. The reason I figured that was an excessive charge, I had a brother who was a locomotive inspector for the Interstate Commerce Commission for twenty odd years, and he told me of a circumstance like that in Oregon that came under his jurisdiction, where the rent of the engine was less than ten dollars a day, and they rented that engine from the Southern Pacific.

Q. That was some independent,— A. Some small outfit like this, a logging outfit.

Q. They rented it about half the price then? A. Easy. They didn't even own an engine; they rented one from the Southern Pacific all the time.

Q. They rented one all the time? A. Yes; they rented it 642 all the time.

Q. Well, don't you think that would make a difference, in the rental of an engine continuously, or one you rented for a few days? A. Well, it might be, but these engines we always got from the Great Northern, they were not engines that were taken out of their service; they were engines that were idle down there. This



class of engines,—the traffic has outgrown these small engines entirely, and any they had they hardly ever used.

Q. Don't use them themselves down there? A. Hardly at all.

Q. But they do keep them in condition so they can be operated?

A. They have very few to keep in condition; they have gotten rid of nearly all of them.

Q. Well, you admit, so far as the Montana Western is concerned, it is lucky to have a few of them left? A. It is; yes.

Q. You couldn't put one of the big engines on this road? A. No; they wouldn't allow them to come on.

Q. As a matter of fact, the Montana Western's track is about as poor a railroad track as you ever saw, isn't that right? A. Oh, yes; it is light steel and everything.

Q. And laid pretty much on the surface of the ground?  
643- A. Oh, yes, entirely,—practically entirely.

Mr. Jardine: I think that is all.

Redirect Examination.

Q. (By Mr. Loble:) You heard described here, did you not, the plan of rehabilitation of the road, an eight-year plan? You heard it here yesterday? A. Yes.

Q. That would vastly improve that road, would it not? A. I would say it would.

Q. That is the answer to an engineer's prayers, isn't it? A. Yes.

Mr. Loble: That is all.

Recross Examination

Q. (By Mr. Jardine:) What is there about that eight-year plan that would improve the road to such a vast extent? A. Well, they could make this, if they put in the improvements Mr. Atwood told them about, and one thing and another, they could haul bigger tonnage over the road with less trouble.

Q. Well, don't recall, but it seems to me at the present time they are expending something like,—isn't it around twenty thousand dollars a year,—or have in the past for maintenance of the road?

Mr. C. E. Atwood: Twenty-five to thirty thousand.

Q. (Mr. Jardine, continuing:) Twenty-five to thirty,—and the eight year plan, as I recall, calls for an expenditure over the  
644- same eight-year period calls for something like twenty-seven thousand dollars?

Mr. Atwood: Yes.

Q. That couldn't account for, it would seem to me, for an awful lot of improvement? A. Well, the improvements from my point of view would be improvements where you could move a train easier, and that would be to the extent where you could earn more

revenue on a trip, handling it that way, than you can at the present time.

Q. If you had a better road bed? A. If you had a better road bed; yes.

Q. So you could put on heavier equipment? A. Well, even with the present equipment you could improve the loads by quite a bit,— just a few little places. Mr. Atwood, I think, showed that to the Great Northern engineers, but I don't think they took to the idea.

Mr. Jardine: I think that is all.

#### Redirect Examination

Q. (By Mr. Loble:) In 1947 the Great Northern's engineers made a survey and determined that \$171,000.00, which would include ties, plates, ballast and all the various things, would vastly improve this road, and for the year 1948 to expend the sum of \$27,000.00, of which they spent \$17,000. You think that plan, as much as 645 we know about it now, is a good one? A. Oh, it would help a lot.

Mr. Loble: I think that is all.

Mr. Jardine: That is all.

Examiner Bernhard: The witness is excused.

(Witness excused.)

Mr. Loble: Call Mr. Lots.

Roscoe C. Lots, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Your name is Roscoe C. Lots, is it not? A. Yes, sir.

Q. What is your residence? A. Great Falls, Montana.

Q. And what is your official position? A. I am state Chairman for the Brotherhood of Railway Trainmen.

Q. And how long have you been a resident of Montana? A. Thirty-six years.

Q. Are you a trainman yourself, and have you been in the past, Mr. Lots? A. Thirty-six years; yes, sir.

Q. You work as such now? A. Yes; conductor.

Q. And you occupy the position you have described as 646 well? A. Yes. I am a conductor on the Great Northern.

Q. Now, will you explain to the Examiner, if you will, Mr. Lots, the status of the men here, and some of the matters in connection with operations that could occur? A. Well, as stated, I think, in the first day of the hearing an extra cost would be placed upon the railroad if they had to come down to the Montana June-

tion, for instance, and pick up cars set out there, in the event they made a turn-around from Valier. There would be no extra cost to the Montana Western relative to Great Northern crews picking up at the Montana Western Junction. Cars would be set in there and lists would be left in the box with the waybills showing their routing and direction. Crews going north would stop there and pick up their cars, and crews going east would likewise do the same. There would be no extra charge relative to picking up,—giving a crew an extra day's pay, which was stated. Contracts on the Great Northern with employees doesn't qualify,—or, justify, rather, that the men would have a penalty against the railroad for stopping and picking up cars. It would be the same as any other station.

Q. So, so far as that statement is concerned that it would be an extra day's pay to go down there and pick up those cars, that is not correct, is it? A. No.

647 Q. What you have described is done every day, isn't it?

A. That is right.

Q. Along the main line you pick up at sidings like that, don't you? A. Yes; we pick up at Ledger and Fowler according to which direction they go, and there is no extra pay for the crew of the Great Northern.

Q. It doesn't make any difference whether it is outside the city, or outside the yard limits or not, does it? A. No, because they go through there.

Examiner Bernhard: May I ask at this point whether or not this junction is a station on the Great Northern?

The Witness: It connects with the Great Northern there. There is not a station there. All tonnage is delivered now into Conrad. They take their loads into Conrad and get their loads they receive on this branch from Conrad. The Great Northern doesn't set anything out there. We don't use that track at all.

Q. (Mr. Loble, continuing:) But if a wye were put in there, as described, instead of taking it into Conrad then the Great Northern would pick it up as you described? A. Oh, yes, I think they would stop and pick it up the same as any other station.

Q. They have a little box that they put the waybill in, do they not? A. That is where there is no agent or employees, where  
648 you get your waybills.

Q. And that waybill will tell you the destination of the car? A. Which way it is going. That is right.

Q. If this wye was put in there, whereby it connected with the Great Northern, instead of this train going on in over the Great Northern's tracks, you think that would be feasible? A. Well, if the Montana Western could work out a program with their employees, I presume it would.

Q. So far as the Union is concerned, the Brotherhood of Railway, —Engineers, is it? A. Trainmen.

Q. Trainmen. That is one of the Big Four, isn't it? A. Yes, sir.

Q. So far as it is concerned, if that were in effect, the Montana Western wouldn't be in conflict with the Union, would it? A. No; we hold no contract with the Montana Western.

Q. So as a matter of fact, the Montana Western, seeing you have no contract with them, isn't subject to any rules of the Union, are they? A. No.

Q. And that would apply to anything,—wages, or anything else, would it not? A. That is right.

649 Q. So if a wye were put in there and the Montana Western wanted to make arrangements with,—to run these trains past time, three days a week, as was attempted in 1938, if they find they could do that feasibly, they wouldn't have any trouble with your Union? A. No; we would have no complaint there at all. We have no contract with them. They can't be violating any contract if we didn't have any.

Q. They wouldn't be violating any contract because they aren't under your jurisdiction, are they? A. That is right.

Q. Never have been, so far as you know? A. No.

Q. And aren't now? A. Well, the entire crew belongs to my Brotherhood, and they are one hundred per cent Union.

Q. That doesn't change the situation? It becomes a matter of contract between you and the road as to whether or not it would be enforceable? A. That is right.

Q. Now, these men,—how many men work here and what are their periods of service, and who are they? A. Well, we have now an engineer that came up from a brakeman. I think his years of service is around ten years.

650 Q. What is his name? A. Wentworth.

Q. Wentworth? A. Yes.

Q. Now, the next? A. Well, there is a man by the name of Stokes, the conductor now. His years of service, I think, is six, but he seems to be relieving a man by the name of Campbell, who is the oldest man in service, with eighteen years service as conductor.

Q. And the next? A. Well, we have an extra man employed now in place of Mr. Campbell, furnished by the Great Northern out of Great Falls. They have borrowed him, you might say. He holds no rights on this railroad, neither do any of the employees on the Montana Western hold any rights on the Great Northern.

Q. The employees of the Montana Western must pass a certain type of examination and qualify in the same way as the Great



Northern employees? A. If they use the Great Northern main line.

Q. Yes. A. That is a requirement of the Great Northern.

Q. And that occurs by reason of the fact that they tore up their track a while back and proceeded to run over the Great Northern, is that right? A. Yes. They have to come under the standard Book of Rules and pass an examination, to operate on the main line of the Great Northern.

Q. Until they came under that regulation, these men that you described had no retirement rights of any kind, did they? A. They all come under the Railroad Retirement Act.

Q. I shouldn't have said that,—but under railroad rights, I mean? A. They have no rights, only on the Montana Western.

Q. And if tomorrow this road would be discontinued, these men who were employed for these years would just be through, would they not? A. Well, that is the question I was asking of the Examiner relative to abandonment of this railroad, if there are any provisions that can be made for these employees by the Interstate Commerce Commission, if the track is taken up.

Examiner Bernhard: When the Commission authorizes abandonment of a portion of a railroad they usually impose conditions for the protection of the employees, but where it authorizes the abandonment of a railroad in its entirety, my understanding is that they do not impose any such conditions.

The Witness: That is my understanding, too, but it is a bad feature for the employees who are here. They are really set out, they are done.

Q. (Mr. Loble, continuing:) And they are men, some of them, that have reached an age where employment,— A. (Interposing:) They couldn't gain it other places.

Q. They couldn't gain railroad employment, could they? A. No. The engineer that is now working might be able to. He is thirty-eight years of age. Whether the Great Northern would have a place for him, or not, I couldn't say, but it would be hard to cut in behind all those older men and expect to get a job. Now, the conductor is sixty-one. It would be impossible for him to get a job, although during the war they did hire men at sixty-five when the age limit was twenty-six for men starting,—but that was an emergency.

Q. In short, these men would just be out of luck? A. They are going to have to look for jobs on this new highway, I think.

Q. Well, there is going to be a lot of gravel shovelled there. A. I don't know if they know how to shovel.

Mr. Loble: I think that is all.

## Cross Examination

Q. (By Mr. Jardine:) Mr. Lets, at Conrad,—so far as you know, did they ever maintain a separate switching crew at Conrad?

A. At one time,—I think it was in '20,—during the time they struck oil there.

Q. And when they were maintaining a separate switching crew at Conrad, do you know whether or not they,—if they went  
653 out of the yards at Conrad to make a switch, whether or not there was an additional day charged for that switching out of the yards? A. They had the job bulletined,—they had this switch engine bulletined between Brady and Shelby. What I mean is they would go over to Brady and perform switching and there would be no extra day paid there. If they went out of the bulletined limits they would have to be given another day's pay.

Q. Well, if for instance, they went out to switch out of the yard,—the bulletin you are talking about, I am not familiar with railroad terms,—you say the bulletin covered between Brady and where? A. Conrad. I don't think it covered this way:

Q. Would it cover, for instance, a station there where they would switch cars from the,—oh, I suppose the refinery,—that is out of the yard limits, isn't it, the refinery? A. Yes; but it was covered under the bulletin.

Q. It was covered at all times under the bulletin, would you say? A. Just while the crew was there.

Q. I mean at all times the switching crew was at Conrad? A. Yes.

Q. My understanding was that there was a certain time they charged a day's pay to go down and switch at that,— A. At that refinery?

654 Q. At that refinery; yes. A. Well, this crew was bulletined to Brady.

Q. What was that? A. That crew was bulletined to Brady. The refinery was east of Conrad, and they could stop there and do that work as well as go to Brady and do their work.

Q. Well, I understand that, but you did say there was never a time that the switching crew switching out of Conrad and going down to the refinery obtained a day's pay for that going down there and performing a switching operation at the refinery,—out of the yards at Conrad? A. No; they couldn't get it, if they were assigned there?

Q. What? A. They couldn't get an extra day's pay if they was assigned on that.

Q. That is what I am saying,—at no time was that condition ever true? A. No; not if they were assigned in that district.

Q. What do you mean, "if they were assigned in that district?"

A. Well, if their assignment called from Conrad to Brady they could send them down to the refinery or over to Brady as many times as they wanted to during the sixteen hours they were permitted to work and not get an extra day. They would have to pay them for sixteen hours, of course.

Q. Well, what I am trying to get at is: That contract, or 655 agreement, or whatever you call it, was in existence at all of the time the switching crew was in Conrad, and applicable between Brady and Conrad? A. I would say yes.

Q. Now, they don't maintain a switching crew at Conrad now, do they? A. No.

Q. And haven't for quite some time? A. Not for a long time.

Q. So that any switching that is done in Conrad now is done by the regular crew that is transporting freight through the town of Conrad? A. That is right.

Q. And from your experience in railroad matters, you know as a matter of fact that it would be impossible to obtain a Great Northern crew to operate this railroad on part time out of Conrad, don't you? A. Well, I don't know. They would have to own the railroad to start with. They would have to take it over, and these employees that are on this railroad up here hold the first rights, of course; so if the Great Northern did take it over and they maintained a crew that came up from Conrad every day and then went back to Conrad and did that work at Conrad, which in the fall of the year there is plenty of it,—our crews are not able to handle 656 it from Great Falls, although we have two and three trains, the switching at Conrad there is plenty of it in the fall of the year, and when a crew gets there and it is going through they have no time left to do any work at Conrad, and therefore they have to pass it up. That is in the fall of the year.

Q. And that is when the railroad traffic is heavy up here, too? A. When the wheat rush is on; yes.

Q. So your crew would have to be working practically all the time on the road between Valier and Conrad? A. Yes; there would have to be a separate crew there. That crew couldn't come from Great Falls and do all the work.

Q. If the Great Northern were to handle it there would have to be a separate crew, wouldn't there? A. Well, I would imagine they would put in the rest of the day at Conrad switching.

Q. Well, they might be able to put in part of their time at Conrad? A. Yes.

Q. But if the work required them to work,—I mean the train service between Conrad and Valier required a couple of trains a day, there wouldn't be any extra time on that,—during the peak

load, would there. A. They would get terminal switching at Conrad; yes.

Q. What do you mean? That they would get additional  
657 pay for their switching at Conrad? A. They would get one day's pay for going to Valier and back.

Q. And what about the switching at Conrad? A. That would constitute switching.

Q. Well, what would that constitute with reference to pay? A. If they came up here to Valier and went back in eight hours, which is a day, and put in another day at Conrad, that would be sixteen hours on both assignments.

Q. Well, they would be paid for sixteen hours work? A. Yes.

Q. But you do know, as a matter of fact, that it wouldn't be possible to obtain a crew to run this railroad on a part time basis, don't you? A. Well, that would have to be up to the management of the Montana Western. I don't know how they hire their employees up here. They don't come under the schedule of the Great Northern relative to working conditions.

Q. Well, I mean so far as the Great Northern is concerned, if it were to operate the railroad? A. Well, I presume the Great Northern,—it has branch lines at other places that we cover, and the amount of work that is at Conrad, but I don't know how we are going to run a Great Northern crew up here with the Montana Western owing it.

Q. Well, at the present time, at least, if it was a part time  
658 service, it would have to be by the Montana Western's crew, wouldn't it? A. That is right.

Q. And if it was a part time service it would have to be by a crew of the Montana Western that was willing to work part time? A. That would have to be their arrangement.

Q. It would have to be by agreement, wouldn't it? A. If they make it.

Q. You would have to find somebody that was willing to work half time and take half time pay, or whatever arrangement they were to make? A. That is right.

Q. You heard the rates of pay read into the record the other day, didn't you? A. I think it is the same rate as the Great Northern pays.

Q. And do you think it would be possible to get a similar type of employees to work at part time operating this railroad? A. I couldn't speak for the employees here relative to what other jobs you would have for them, whether you could cover it some other way or not relative to working on your water lines, or your railroad, or what they could do,—if they run three days a week how you could employ them, I couldn't say.



659 Q. But unless there was some other employment available, you don't think they would work three days a week, do you? A. If you give them a guarantee of twenty-six days a month, you could run them one day on that.

Q. But you are not saving anything then in the cost of operation, are you? A. You could save on fuel and on the upkeep of the track.

Q. Yes; you might save something for fuel, but you would still be carrying the same tonnage over your track? A. Not if you could handle it in two or three days that you claim you would run.

Q. Your savings would be in the cost of moving your train? A. Yes.

Q. These employees do come under the Railroad Retirement Act, don't they? A. That is right.

Q. I don't know, but how long do they have to work, for instance like Mr. Campbell, that has been on,— A. (Interposing:) He would have to have thirty years service and be sixty-five years of age to be eligible for the pension, although with thirty years of service he draws a pension at once, and his service any place in the United States previous to coming here would count.

Q. You said he had been on the railroad here eighteen  
660 years? A. Yes.

Q. And he served, didn't he, on the Great Northern prior to that? A. He was on the Great Northern thirty years ago; yes.

Q. Do you know how much service he has got in all? A. I would figure around thirty-five years, or thirty-six.

Q. You would think then he would be eligible for retirement at this time? A. If his physical condition was proven by the Government doctors relative to his not being able to perform the work, he could take his pension, but if he takes his pension now and is still able to work he is four years under sixty-five, and he would have to take off one-fifteenth for each year under sixty-five,—I mean you would deduct that from his pension.

Q. You would deduct then in all four-fifteenths of the pension rate of pay; is that right? A. Yes.

Q. So that he would be losing,— A. (Interposing) Four-fifteenths.

Q. (Continuing:) —four-fifteenths of what his pension would otherwise be if he were able to continue operating for a period of four years more? A. Yes.

Q. Of course, if his physical condition was such that it would prevent him from operating, and the railroad so found,—  
661 A. (Interposing:) He would draw his pension at once.

Q. He would draw it now? A. Yes; he would draw the full rate of his pension now.

Q: And he is the only one of these employees that you have recited that would look as though they would in any way be qualified for a pension? A. Yes; some of the section men might be qualified. I wouldn't say as to how long they have worked. I wouldn't know that.

Q. You just know with reference to the ones you have recited? A. The train crew; yes.

Mr. Jardine: I think that is all.

#### Redirect Examination

Q. (By Mr. Loble:) Mr. Lots, you feel, do you not, that Mr. Atwood as superintendent of the road is better qualified than you to determine whether or not he could employ people part time or run this road three times a week, don't? A. Well, I would think so.

Q. You heard Mr. Brophy on the stand testify yesterday that in 1938 at a hearing in Conrad,—no one seems to remember it except Mr. Brophy, but it was held,—that Mr. Atwood there stated they could operate this road three times a week. You haven't any reason to dispute that, have you? A. None whatever.

Q. As a matter of fact, it isn't anything unusual with some of these side roads to operate freight lines on a bi-weekly or tri-weekly service, is it? A. We have them twice a week; yes.

Q. You have them around your road, and other Montana roads have them in a number of places, do they not? A. Yes.

Q. You have them on the Great Northern? A. That is right. I might say we have none around here. They might have them on the east end.

Q. In other words, unemployment has been on the increase in business generally, and it has been with the railroads, has it not? A. We have a lot of men out of work today; yes.

Q. Under present day conditions,—and whether they will improve or not, no one knows,—it is harder to get a job than it used to be, isn't it? A. Yes; it is.

Q. You don't for one minute say that these men who have worked here as long as they have wouldn't be willing to, on a three-day a week program, to work for the water company, or work in some other capacity, and remain here where they have their homes,—you wouldn't say they wouldn't do it? A. They will have to have a job, and have to have their bread and butter, and they will probably take something,—I wouldn't say.

Q. If they did that your Union wouldn't interfere with it a particle, would it? A. We would have nothing to say.

Mr. Loble: That is all.

Mr. Jardine: That is all.

Examiner Bernhard: Mr. Lots, you referred to the fact that the Montana Western employees have to pass an examination as to the Rule and Regulations of the Great Northern by reason of the fact that they operate their train partly over the Great Northern? A. Yes.

Examiner Bernhard: From the Junction into Conrad.

The Witness: Yes; they must be able to understand train orders and working rules of the Great Northern Railway before they are permitted to enter the Great Northern's tracks at the junction down here.

Examiner Bernhard: Does that increase the cost of the Montana Western Railroad any? A. No; these examination are given,—they usually have an examination car over the Great Northern System about every four years, and the men are called in and brightened up on the examination,—new rules.

Examiner Bernhard: Does that contribute in any way, to your knowledge, to the cost to the Montana Western Railway Company for operating its railroad? A. No; there is no cost to it.

664 Examiner Bernhard: Possibly I should have asked that question of one of the Applicant's witnesses.

Mr. Jardine: I think we did ask it.

Examiner Bernhard: In what way does it increase the cost?

Mr. Jardine: I think we did ask it, and the answer was there wasn't any increase in cost.

Q. (Mr. Loble, continuing:) Was there an increase in cost to the Great Northern? A. It costs the Great Northern considerable to send that four men with the examination car over the system and pay them to examine these men.

Q. Do they have station agents, or something to be examined? A. They must all come into the examination, too, and the operators and section men.

Q. I understand this agent had to go up there and phone into Conrad to get the right of way, and that man had to be paid? A. I don't know how they handle the train orders, the train orders that have to be given to them. In former years they used to send them down and put them in the booth at the Montana Western Junction, and when this crew got there they picked up their orders, and the agent, I think, was paid for delivering them down there.

665 Q. I have been told he has been paid as much as a hundred and eighty dollars a month. Do you know whether that is right or not? A. I don't know what that would be for,—whether they have an operator up here, or whether it is telephone charges,—

Q. It would cost the Great Northern,—it would be a cost to the Great Northern, whatever it was, and not to the Montana Western?

A. I don't know who pays that,—how they are handling orders now.

Q. You don't know whether the Montana Western is finally charged with it, or not? A. No; I wouldn't know that.

Mr. Loble: that is all.

Examiner Bernhard: You are excused.

(Witness excused.)

Mr. Loble: Call Mr. Lohse.

ORA LOHSE, was sworn as a witness, and testified as follows:

### Direct Examination

Q. (By Mr. Loble:) You may state your name, please. A. Ora Lohse.

Q. And where do you live? A. In Valier.

Q. You are the modern competitor of the railroad and 666 automobile; are you not? You are an aviator? A. Well, no, I don't feel aviation, from my standpoint, is a competitor.

Q. I don't think it is, either. A. Each one has its place.

Q. That is right. You are a flyer, are you not? A. Yes, sir.

Q. And is there an air field here at Valier? A. A very good one.

Q. I called you particularly because,—I will ask you whether or not this community is a progressive, alert community in every respect? A. I think it is.

Q. You have lived here how long? A. I have lived here three years. It certainly would seem progressive from the standpoint of having an airport possibly ten or fifteen years before most towns, and a good one. It seemed like money that was spent at that time, more or less on Government relief work,—I think it was probably as well spent as a good deal of it was.

Q. Valier is a progressive community,—it has been ahead of most towns and many much larger in the matter of aviation, has it not? A. Yes.

Q. You don't know of any town in Montana of its size that 667 can compare with the type of airfield it has, do you? A.

Well, I think we could even go further than that. I get around the country quite a little, and I don't know of any airport that has as many things that is desirable for an airport as we have, that is, a town of comparable size and even ones a lot larger.

Q. Is this under the supervision of the Civil Aeronautics? A. Yes; it is listed as a Civil Aeronautics Airport. It is also under contract with the Army as an emergency field.

Q. Is this a certified, classified airport? A. Yes, it is. I am not just sure of its classification, but it is classified.

Q. You consider it an A-1 airport, do you not, as a flyer? A. Yes.



Q. How about the lake out here? A. It is usable as sea-plane anchorage.

Q. And because of the proximity to the border,—it is just a matter of moments to fly from here to Canada, isn't it? A. That is right.

Q. And the proximity to Alaska is not very remote, is it? A. It is right on the road.

Q. In other words, then when you get to Alaska you go on further, if you want to get to get to Russia, couldn't you? A. Yes, sir.

Q. In other words, it is recognized; is it not, that the air-  
668 line coming up from Great Falls and up through here and this locality is on a direct line to Alaska, with the speed of aviation it is extremely important not only from a commerce angle; but from a military angle; is that right? A. That is right.

Q. There is being developed now through this area Alaska Aviation, is there not? A. I think so. I believe there has been a line started that has a more or less regular schedule. I am not too sure of that.

Q. I think the Examiner would be interested in knowing you instruct students,—do you not? A. Yes.

Q. Do you have a considerable number of them you instruct in flying? A. Oh, I couldn't, right off hand, say how many students there are who learned to fly here,—possibly in the neighborhood of twenty-five, that have their private licenses within the time I have been here.

Q. And small planes are used in some of these areas, even in farming operations going from one place to another? A. We are finding a big use for the small airplanes now in crop spraying.

Q. In crop spraying? I think perhaps it would be interesting for you to tell the Examiner what crop spraying is. Perhaps he has not heard of it.

669 Mr. Jardine: I don't believe,—we object to it. I don't think,—

Mr. Loble: It is competent.

Mr. Jardine: I am willing to let it go to a reasonable length, but it seems to me we are just encumbering the record. I think I will put in an objection on the ground it is incompetent, irrelevant and immaterial.

Examiner Bernhard: It seems to me the crop spraying element may have some bearing.

Mr. Loble: Very much so. We went far afield with Mr. Young and the others. We let them tell any conversation they wanted to tell about. Now, this man wants to tell about this community spraying its crops, and the very crops that are going over this railroad.

Mr. Jardine: Well, Lester, I think there should be some limit to it.

Mr. Loble: I thought there was some limit. I thought yours was the limit, too.

Examiner Bernhard: We will let him describe that part of it.

Mr. Loble: Yes.

A. Well, our crop spraying consists of weed control and insect control, and it has been found very desirable, particularly in this community because of irrigation. While ground sprayers operate very well on ordinary dry land work, it is very desirable in  
670 irrigated country to spray crops from the air to avoid having wheel tracks in the field which cause a lot of trouble in irrigation.

Examiner Bernhard: To what extent do you do crop spraying?

The Witness: Well, this is our first year and I possibly,—well, over ten thousand acres this year, and there is no reason why it won't expand, as more people find out its use.

Examiner Bernhard: Do you use this railroad for the transportation of any materials?

The Witness: Chemicals, I believe, come in by railroad.

Examiner Bernhard: How about gasoline?

The Witness: The gasoline doesn't, but the Diesel oil which we use in our spraying operation, which this year consisted of possibly ten thousand gallons, came in by rail, I believe.

Examiner Bernhard: You do not transport freight to and from Valier?

The Witness: No.

Examiner Bernhard: That is all I have.

Mr. Loble: That is all.

Mr. Jardine: No cross examination.

(Witness excused.)

Mr. Loble: Call Mr. Heyen.

H. J. HEYEN, was sworn as a witness and testified as  
671 follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. H. J. Heyen.

Q. And you live where? A. Four and one-half miles east.

Examiner Bernhard: Where?

The Witness: Four and one-half miles east of Valier.

Q. (Mr. Loble, continuing:) You are a farmer? A. Yes.

Q. And approximately how much acreage do you farm? A. Around twelve hundred.

Q. You are a grower of grain, are you not? A. Yes.

Q. And do you use the Montana Western Railway? A. I think it all goes over it; yes. I deliver it in Valier.

Q. You deliver your grain to the elevator in Valier? A. That is right. Whenever I can.

Q. By that you mean whenever you can get it in? A. Whenever they have got cars. I have got a lot out there I would like to deliver.

Q. And you, and those situated like you, are in that difficulty now, are you not? A. Yes; I would get a lot more revenue if they would get the cars.

672 Q. You can't make any money if they don't haul it, can you? A. That is right.

Q. Have you got lots of grain on your farm to bring in here for hauling? A. Yes.

Q. And your neighbors, as well? A. That is right.

Q. Do you spend much time trying to see if you can get cars, or get into the elevator? A. Well, every time I get around one I plead a little.

Q. State whether or not, in your opinion, public necessity and convenience requires the operation of this railroad? A. Why, yes, I think it does. The whole thing was laid out with that railroad here. We all moved here with the idea that we would be close to a railroad.

Q. Is that one thing that cause you to move here? A. Why, I certainly would,—or did, rather. I wouldn't have thought of locating here if I had to be twenty-five miles from a railroad.

Q. Did you ever grow beets? A. I did.

Q. And have you raised some stock? A. Yes, and fed stock, too.

Q. What is that? A. Fed stock, too. I used to feed lambs.

673 Q. Lambs are transported almost entirely by rail, are they not? A. We loaded right out of Valier here.

Q. The raising of beets and the feeding of beet tops go right hand in hand with the livestock industry, don't they? A. That is right.

Q. And the beet tops are highly desirable for feed, as described by the gentleman from the Utah mills; is that right? A. That is right; very good feed.

Q. Is it true that, like the rest of them said, the reason they quit beets was because of the difficulty of getting people to harvest them and farm them? A. During the war there it got to be too big a problem, labor problems, but I rather think, everything else being equal, they will start growing beets here again.

Q. Would you like to go back to it? A. Well, yes, if I was a little younger I would like to.

Q. And did you give it some consideration this year? A. I did. Yes, I did.

Q. And if you could get the help you would like to go back to it, and would go back to it? A. I would; yes.

Q. The shipment of beets as described by the man who run the mill in Utah, and the local man here, Mr. Scalley, of Chinook, 674 is as they have described it? They are shipped in gondola cars; are they not? A. That is right.

Q. It doesn't require the care that grain does? A. Oh, no; weather don't mean much to them. They don't have to be protected from rain or anything else,—snow.

Q. Insofar as the growing of beets, and this being a feeding country for livestock, if the railroad is abandoned, in your opinion, is that the end of it? A. That is the end of your beets; yes.

Mr. Loble: That is all.

#### Cross Examination

Q. (By Mr. Jardine:) You say that the beets don't require, as I would take it, any shelter. In other words, you could haul your beets from your farm and dump them in a dump here in Valier, for instance, before they are put into a car? A. Well, you can, yes, but that was quite a problem. It made it more of a problem for the farmer delivering them because you didn't dare deliver any frosted beets where you are going to pile them. That is what you are talking about, isn't it.

Q. Yes. A. You couldn't deliver a frosted beet. They would send you home with them.

Q. The beets had to be unfrosted? A. Well, they just had 675 to be pulled and topped and hauled right in,—don't you see?

Q. If they are frosted they have to be put in the car immediately? A. Yes, and if you loaded into a gondola car it didn't make much difference whether they laid out all night and got frosted, because they would ship them to the factory and process them right away.

Q. But if they are in a pile and get frosted, what then? A. Well, on the outside that didn't matter, but they didn't dare be frosted inside the pile.

Q. They wouldn't be frosted inside? A. No; they didn't dare be, either. They would start heating, spoiling.

Q. But you don't have to have an elevator, or anything like that, for beets? A. Well, they have their loading equipment.

Q. But I mean like a grain elevator? A. Oh, no; no storage.

Mr. Jardine: That is all.

Mr. Loble: That is all.

Examiner Bernhard: The witness is excused.

(Witness excused.)



Mr. Loble: Call Mr. Entrof.

676 PAUL ENTROF, JR., was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) State your name, please. A. Paul Entrof, Junior.

Q. And will you tell us where you live? A. I live in Valier.

Q. You have been a resident here about how long? A. A little over three years.

Q. Do you operate an elevator? A. I manage one.

Q. And whose elevator is it? A. The Farmers' elevator.

Q. That is the Farmers' Union, is it not? A. Yes; it is.

Q. The Farmers' Union is engaged extensively in elevator operation and other types of business, is it not? A. In this particular instance it is a local organization.

Q. A local organization,—the local Farmers' Union, is it? A. Well, it is called the Farmers' Union, and it is owned, I believe a hundred and eighty-six farmers in this community, who are now engaged in agriculture, or have been engaged in agriculture in the past.

Q. Mr. Peterson, who was on the stand here, is identified with your concern, is he not? A. He is.

677 Q. The gentleman who is the speaker pro tem of the legislative assembly of Montana? A. Yes.

Q. And many of those who have been on the stand here in the room are identified with it, are they not? A. They are.

Q. Now, tell us, if you will, the capacity of your plant? A. Oh, right close to sixty-five thousand bushels.

Q. And the approximate cost of the property? A. I think around very close to fifty-two thousand dollars.

Q. And after taking depreciation what is the book value? A. About thirty-eight thousand dollars.

Q. And in the last three years has there been any extensive investment in connection with your property? A. There has.

Q. How much? A. Oh, we have spent about thirty-four thousand dollars in the last three or four years, in improvements.

Q. What will happen to the Farmers' Union elevator, in your opinion as an elevator man and a resident of the community, in the event the Interstate Commerce Commission permits the abandonment of this railroad? A. If they permit the abandonment of this road, and we find no way to transport our grain with the

678 facilities the Great Northern had,—or, rather, the Montana Western has, that is, to handle this grain efficiently,—now, to illustrate what I just said: They talked about,—I believe the repre-

sentative of the International Elevators spoke about loading cars at the rate of eighty-five thousand bushels an hour, I can't load it quite that fast; I can make about three thousand bushels an hour, but it would take a pile of trucks to keep a stream of wheat going to Conrad at that rate, if a man had four or five cars in a row. That would be pretty tough. And generally our conditions here,—we are plugged a majority of the time, and have been plugged since about the twenty-sixth of August of last year; so unless we were given a good public utility carrier to replace the one we now have, operation would be extremely difficult. In fact, I wouldn't say that the business would fold up, but it would be greatly curtailed. It wouldn't be of nearly the service that it is to the farmers of this community now.

Q. You have, as an alternative, to either use it just as storage, or to move it out of here; is that right? A. Yes. So far as the storage proposition is concerned, when you maintain insurance and up-keep and so on the buildings of an establishment of that type it runs into quite a little money. Your storage wouldn't pay out very well.

Q. Do you see any way out of this, Mr. Entorf, if this  
679 railroad goes, except for you to go, too, at the moment?

A. Well, if I am to maintain,—I think my earning power as a person would drop because of the railroad's abandonment, and I would have to, in order to maintain the earning power and my personal present standard of living, I would have to go elsewhere. That is from my personal standpoint. So far as the elevator is concerned, its service would be greatly curtailed.

Q. It has been testified here that one of your competitors, Cargills, which is a concern whose name runs all through these proceedings, will use trucks. Is Cargill in a different situation than you are? Does he have plants in,— A. (Interposing:) Yes; they do. We are a local concern. We are affiliated, however, with the Farmers Union Grain Terminal. They are our marketing agency, and they have a terminal in Shelby and are constructing another in Great Falls this year, but from past experience I can't see that is too profitable, to move grain from one point by truck to another point and dump it and there store it a little while and load it out. I don't think that works out very good. We tried that a little last fall with some grain, and it is all right in a way, but from our standpoint we didn't make any money by it. It didn't help us out any. We handled the grain, sure, but we didn't make anything on it, and unless you are going to make a couple of cents a bushel there is no use in handling it that way.

680 Q. You used the word "plugged." Do you mean by that your elevator is filled to capacity? A. The term "plugged," means your capacity is ninety per cent filled.

Q. I have some other slang expressions,—I am somewhat reluctant in using slang expressions,—but I have a note here that “Cargill has the bulge on your in cars.” A. It is my personal opinion that they have had since I have been here, and I have been led to believe that that condition has existed in the past.

Q. Now, in other words, Cargill is within sight of your plant,—his plant is within sight of yours? A. Yes.

Q. You don't have any trouble knowing when they get cars and you don't, do you? A. That is right.

Q. And with the Montana Western, Cargill's connection with The Valier Company and all the interlocking,— A. Interlocking directorates.

Q. Or whatever it is, you find, wherever it comes from, that they get the cars and you don't; is that right? A. Well, it isn't a fact that they,—they don't get all of them.

Q. No. A. But I have been told, and I have no reason to  
681 challenge the statement, that in past years the Farmers' elevator for several years they handled up to as high as forty per cent of the grain that came into town, and during the three years that I have been here we have never been able to get over twenty-five per cent. Last year it was twenty-two and a half per cent; so that led me to believe there was something that kind of kept us from going along at that forty per cent rate.

Q. And the outfit that gets the cars gets the business, doesn't it? A. That is right.

Q. Farmers, like this last gentleman that was on the stand, said he had a lot of grain he would like to put some place, and it doesn't make much difference to him, does it, he is going to put it wherever he can, isn't it a fact? A. That is right.

Q. And if Cargill has cars lined up there, and you are just standing on your platform, he will go over to Cargill? A. Absolutely.

Q. How many cars did you get in June? A. Three.

Q. You must have gotten more in July? How many did you get in July? A. Two so far,—I got four altogether, but two  
682 were no good. I couldn't load them, so they don't count.

Q. That is a serious matter to you in your business, is it not? A. It is very serious.

Q. How many cars could you use? A. Oh, I have got orders with the railroad for sixteen cars, I believe. However, I anticipated they would come very slowly. I suppose if they had been coming right along I could get another order from the Commodity Credit Corporation,—and I should have an order pretty soon from them for another thirty eight cars which I hold in storage in the elevator, and I have potential customers down there who talk about fifty or

sixty thousand bushels; so I imagine we could have used about fifty cars in the last two months.

Q. Of which you got three in one month, and two in another?

A. Yes.

Q. In other words, you can't let the farmers in with their crops until you can get some of this grain out of your elevator? A. That is right.

Q. And you can't get it out unless you can get cars? A. That is right.

Q. Someone told me to ask you about the "coopering" of cars. What is that? A. A grain car comes in, as it is now,—the Great Northern puts the doors in the car, and there are generally ten doors in a car, and it is the elevator's man's job, if he can get it done, to cooper the car up in such shape that it will hold grain, that is, take these doors and put them in there and cover them with paper, and make whatever repairs is necessary on the car to keep it in service,—to hold the grain.

Examiner Bernhard: They are the ordinary box cars?

The Witness: Yes, ordinary box cars.

A. It is a coopering condition that exists all over the country so far as grain is concerned. It is actually the nailing of the doors into the car, and according to the Montana grain standards. They say in their little book that cars are supposed to come to the elevator ready for loading. That is what they say in there, but I guess it has been the custom for years for elevator men to do their own coopering. A great many of the cars we get are in pretty sad shape, in dirty condition and much refuse in them, and so on.

Q. Where do they pile the doors? The doors, where are they supposed to be piled? A. Well, when I first came here they were piled down at the junction of Cargill's spur and the main Montana Western line, and they were delivered to the elevators at various times by the dray man. He would deliver, maybe, forty today, or maybe put a couple of nice piles there. I don't know whether it was through my efforts,—I hollered long enough about it, but they finally put about a third of a carload at each elevator, or thereabouts, or maybe half a carload. Then you had a plentiful supply of doors,—I don't know,—this spring the Great Northern came up and loaded them all up and took them back to Conrad. Why they did that, I don't know.

Q. Tell us what a door is. What do you mean by that? A. A door, it is about seven feet long, I believe, eighteen inches, or sixteen inches,—sixteen or eighteen inches wide, and consists of two one inch boards,—two layers of one inch boards, which are nailed together until they make, you might say, a light, wide plane, and they are used,—nailed from the floor up as high as you deem it necessary to hold the grain in the car.



Q. I think it has been testified here that there were forty-nine cars altogether delivered during June into Valier? A. Yes.

Q. You have accounted for,— A. Three.

Q. Three and two. Do you know where the rest of them went? A. Oh, I suppose that in varying quantities they went to the Greeley and the Gallatin, Cargill and International.

685 Q. And do you know in what proportion? A. No, I don't.

I couldn't say offhand. When I first came here and sized up the situation and objected to it, kind of kept track of it, and got no place; so I have just ceased to object any more. I guess a fellow gets so tired of objecting to a situation that he,—

Q. Going back for just a moment to these doors: Hauling all those doors back to Conrad, that wasn't ordinary railroad practice, was it? You needed the doors, didn't you? A. Well, we need them, yes, but they have been throwing them in any way, in the cars down there. We need the doors all right, and sometimes we need them in varying amounts. Sometimes you can cooper a car with four doors; sometimes fourteen; sometimes sixteen. I have used as high as twenty-six.

Q. All of those things slow up your operations? A. Well, I will say it was a,—Oh, I will say, it was a toss-up. We didn't make or lose anything by it, I don't think,—to be honest with you.

Q. Secretary of Agriculture Brannin, in a general program, calls for more and more local storage, does he not? A. He does.

Q. And more diversified farming; is that right? A. Well, the Department of Agriculture has always stressed that diversified farming wherever practicable, and it is advantageous to  
686 healthy farming economy.

Q. In your opinion, we are going into quotas, aren't we? A. I wouldn't be a bit surprised. A fellow told me the other day that the quota was out in Glacier County, I believe.

Q. Explain what that means? A. Well, it means allotments of acreages of different crops. Up there they,—this is hearsay, but I have no reason to doubt the man; he owns land up there,—he said that their quota was cut, and their grain was cut sixty per cent, that is, the wheat quota. That means they will be able to raise forty per cent of the wheat they raised in the past,—in acreage that is.

Q. But that would send you into diversified farming, such as beet raising and the like, won't it? A. In that particular area, I don't think so.

Q. No; I mean around here? A. Around here it would. I don't think our acreage will be cut like that because there has been a lot of land broken up in that country in the last few years.

Q. If it is cut, why, you are more in need of storage space than ever, are you not,—on local storage, or not? A. Well, your diversi-

fication will lead, perhaps, to less grain and more of other commodities, but the farmer who has a good deal of storage on his farm, or can find local storage, it has worked out that he is the man who has always sold his grain for the better price.

687 Mr. Loble: I think you may cross examine.

### Cross Examination

Q. (By Mr. Jardipe:) With reference to the cutting of quotas for wheat, you haven't heard anything about Pondera County, have you? A. I haven't heard anything on Pondera County yet. However, I would assume that if they have put them on in Glacier County they didn't just pick Glacier County out of the state and leave the rest go by,—

Q. I understand that. This man you talked to is in a position, you think, where he would know first hand? A. I think he would.

Q. And he represented to you he got it first hand, or from hearsay? A. He represented to me that he had talked to his brother-in-law, who had talked to the power that be up there.

Q. That would be the local committee? A. Yes; it would.

Q. Now, you referred to local storage, by that do you mean storage on the farm, or do you mean storage on the farm and in your elevator, too? A. By local storage I refer to farm storage and local point storage.

Q. For instance, storage in any elevator in Valier would 688 include,—would constitute what you include in the term "local storage?" A. Yes.

Q. And that local storage, you say, has been advocated by the Department of Agriculture? A. It has.

Q. There has been some increase in local storage here, that is, storage on the farm, building of granaries in the last year; have there not? A. There have been some built; yes. There has been some that come out of the conditions, too, I imagine.

Q. Now, you said you had endeavored to ship, I think, or transport grain by truck from here. Was that to Shelby? A. Well, we,—I didn't say we had endeavored to do so; no.

Q. I understood you had shipped some by truck. Did you transport any grain out of here by truck at all? A. No; that was from a car shipment standpoint. We shipped some grain there by car. It would be the same as if we shipped it by truck,—I mean the resultant use of storage after it arrived in Shelby.

Q. You shipped to the terminal of your Farmers' Union elevator at Shelby? A. We did.

Q. But you shipped that by railroad? A. By rail; yes.

689 Q. And on that shipment by railroad to the terminal you

found there was a loss to your elevator? A. I didn't say there was a loss.

Q. I mean,—I don't mean an actual loss in money, but I mean a loss in what you otherwise would have earned? A. It was a less efficient operation.

Q. A less efficient operation. Was there any actual difference in the amount of cash you received? A. We haven't received it yet.

Q. What was that? A. I say we haven't received it yet.

Q. Well, will there be any then? You know that? A. Well, yes, there will be some conditioning and insurance charges on that grain and so on?

Q. What? A. There will be some conditioning and insurance charges on that grain, and it seems like every time you load grain up and unload it you lose a little some place.

Q. Can you estimate what loss that would be per bushel, or what difference in price,—if you want it that way? A. Cars vary in loss in transit.

Q. I just mean your total on this grain you shipped to Shelby. A. Well, this grain particularly was loan grain belonging to the farmers of this community. I received it last fall. I got word from the grain terminal that they had room that I could store a  
690 little loan grain up there if I chose to do so, and because of the lack of box cars, and because I had a certain time to do it in, I only got three cars up there. Now, that loan grain was shipped up there for these farmers. These farmers are the ones,—I shipped it there for them and arranged everything, got them terminal storage tickets on it and so on, and in the freight movement, it figures out they are going to lose a cent and a half, and I will have to stand the loss of,—whatever loss there is, in loading and unloading, and so on. That is the set-up. Those farmers lost a cent and a half a bushel by doing it. However, they were willing to sacrifice that cent and a half in order to get it into an elevator.

Q. Now, when the farmers order cars, do,— A. (Interposing:) What farmers?

Q. Well, the farmers ordering cars to ship their own grain in, do they order them from the Commodity Credit Corporation? A. Well, there is so many ways of going at that: You have regular shipping orders which the Commodity Credit Corporation puts out.

Q. I am talking about grain on the farmer's storage,—his own storage? A. Well, that is what I am talking about, too.

Q. I just wanted to be sure that we are talking about the same thing. A. First, you must be an approved warehouse in  
691 order to handle Commodity Credit grain, that is, you must have certified to certain things with the Commodity Credit Corporation and become certified as an acceptable public warehouse.

man. Then you may receive grain from the farmer; you may store it. Then in order to move that out they must either give you shipping orders, or loading instructions. Now, your shipping orders come from Minneapolis, down through the channels to Bozeman, to Conrad, to us, and they allow you to ship so many cars of a certain kind of grain to them at a certain place, or you may get loading instructions which are, in a way, kind of an emergency set-up which they have, for immediate shipment of farm storage grain. You get this order from the Commodity Credit Corporation, and then you may not load any grain you have in storage. It must be received immediately and shipped immediately. Then the farmer, he, himself, may get an emergency shipping order, that is, in the case of an emergency where a bin is breaking out, or he has weevally grain, or something of that nature, then he may apply to the Commodity Credit Corporation for an emergency shipping order, and, in turn, may apply to the railroad to have certain boxcars,—he may order so many box cars. He may do that. I think that probably answers your question.

Q. Who is it that determines where that grain is shipped,—to what elevator it is shipped? A. The farmer, he states where  
692 he would like to haul it, but if he may find room somewhere else he may go and have his orders changed. He must also have an order, what is called a commodity delivery notice from the Commodity Credit Corporation before he can deliver to an elevator in the case of loan grain, or he must have,—I don't know the name of the form, but is called Form PA-3, in order to deliver purchase agreement grain.

Q. But, primarily, he is the one who determines what elevator,—he tells the Commodity Credit Corporation who he wants the grain shipped to? A. Yes.

Q. Now, with reference to the operations in the event the railroad were abandoned, you don't think it would mean the abandonment of this elevator, apparently? A. I don't think so.

Q. You think there would be some arrangements made for shipping by truck? A. I wouldn't say yes, and I wouldn't say no to that, because the farmers own this elevator, and they own it, and they might as well set it there and keep it and use it for storage, if nothing else. However, I would like to try to haul some grain if it came to that, but I don't think it would be nearly as successful or efficient as a railroad, because of your congestion. Now, one week  
693 after this elevator in Valier became plugged the terminal in Shelby was plugged, the Equity elevator in Conrad was plugged,—pretty nearly every elevator in the country was plugged. Now, if we were to move our grain by truck we would have to move it to its ultimate destination.



Q. That is, for instance, Minneapolis or Fargo, or wherever it would go? A. Minneapolis, Grand Forks, Spokane, Portland, Salem, Oregon, Astoria, Oregon,—wherever it happened to go, and I understand North Dakota is an awfully tough state when it comes to hauling stuff through there on their highways. That is hearsay.

Q. What? A. That is hearsay.

Mr. Loble: Don't mind that. We have lots of that.

Q. (Mr. Jardine, continuing:) You don't think then it would be possible, for instance, to haul from here to your elevator in Shelby the same as if the grain were transported by the Great Northern and the Montana Western? A. I got three whole cars in there last fall.

Q. To Shelby? A. That is to Shelby.

Q. That was their capacity? A. Well, that was their capacity so far as I was concerned; yes.

694 Q. That was because you didn't have enough cars? A.

That is right; but very soon after that they cut off all shipments of storage grain, immediately after I got those three cars in there. It was partly due to the cars,—I could have,—I had a limited time to get it in there. They gave me ten days, and I could get in just as much as I could get in ten days, and I got those three cars in there in ten days, but shortly after that, very shortly after that, that elevator was completely plugged.

Mr. Jardine: I think that is all.

#### Redirect Examination

Q. (By Mr. Loble:) In other words, there are a million bushels of grain on this railroad; is that right? A. Right.

Q. Where is it going? There is no place in Conrad, is there? A. No.

Q. They are full any way? A. Yes.

Q. No place in Shelby? A. They are full.

Q. And those places do not have the capacity to handle this million bushels, do they? A. No.

Q. In these kinds of times, or any other kind of times, so far as you know? A. No; they don't.

695 Mr. Loble: O. K. That is all.

Mr. Jardine: That is all.

Examiner Bernhard: You may be excused.

(Witness excused.)

Examiner Bernhard: We will take a ten minute recess at this time.

(A short recess was taken.)

Examiner Bernhard: The hearing will be resumed.

Mr. Loble: Call Mr. Walsh.

JAMES F. WALSH, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) State your name, please. A. James F. Walsh.

Q. And where do you live? A. Valier, Montana.

Q. What is your occupation? A. Grain buyer.

Q. And with what concern are you identified? A. Gallatin Valley Milling Company.

Examiner Bernhard: I didn't catch that.

Mr. Loble: Gallatin Valley Milling Company.

Q. (Mr. Loble, continuing:) Is the Gallatin Valley Milling Company a concern that is engaged in business extensively  
696 throughout the state, involving elevators? A. They are.

Q. Does the Gallatin Valley maintain an elevator in Valier? A. They do.

Q. On the right of way of the Montana Western? A. Yes.

Q. And what is the capacity of your elevator? A. Approximately forty thousand bushels.

Q. And state the approximate value you would consider of this property? A. Well, I would say the replacement value would be around forty thousand dollars.

Q. State whether or not your concern uses the Montana Western Railway? A. They do.

Q. And do they use it very much? A. Everything we ship is shipped over the Montana Western.

Q. In your opinion, state whether or not public necessity and convenience requires the continuation of this road? A. It does, surely.

Q. And what would you say as to the entire community, being an agricultural area, don't you feel,— A. It would appear it would be a necessity.

Q. What would happen, so far as you know, to the Gallatin Valley Milling Company and your elevator there, if you didn't have  
697 a railroad? A. We would probably discontinue operations in Valier.

Q. What would you do with the buildings? A. That would be a problem. We would probably take quite a loss.

Q. Could you move it as it stands? A. No.

Q. To tear it down and move it, would that involve considerable expenditure? A. Well, we would probably salvage seven to ten thousand dollars of the value by moving it.

Q. Do you and these other elevators have employees? A. I am the only employee, except for a short time, in the fall, at the Gallatin.

Q. Do they,—do the other elevators have employees? A. They do.

Q. Well, do you know approximately how many? A. There is probably ten men.

Q. Most of these men either rent or have their homes here in Valier? A. They do.

Q. Do you have your home here in Valier? A. I live at the Valier Hotel.

Q. You live at the Valier Hotel? A. Yes.

698 Q. Now these persons if these elevators go out of business would necessarily have to find something else to do here, or leave here, wouldn't they? A. Yes; that is what they would have to do.

Q. When the elevator goes you go, don't you? A. Yes, sir.

Q. You have been here how long? A. I have been here about two years.

Q. Have you been in this business long? A. Well, I have been in the grain business in Montana for approximately forty years.

Q. And I assume, having been in this business for forty years, you have a pretty definite knowledge of the various grain areas in Montana? A. I have.

Q. How would you compare Valier with others? A. I think it is one of the best.

Q. How would you compare the town of Valier with other towns you have seen in Montana of comparable size? A. I believe it is superior to most towns of its size in the state.

Q. The agriculture and the town are both growing active parts of this country, are they not? A. They are.

699 Q. The irrigation,—as a man in the grain business you know that irrigation is the big thing, is it not,—an important thing? A. It is a very important thing.

Q. The irrigated areas in Montana are not too numerous, are they? A. The successful ones are not.

Q. The Gallatin Valley is where the city of Bozeman is, is it not? A. It is.

Q. And that is one of the old irrigated sections of the state? A. Yes.

Q. In this locality and in the entire state, you don't know of anything better than Valier and its surrounding area, do you, for its size? A. As to area, for its size, it is just as good as the Gallatin Valley.

Q. And these farmers are good farmers? A. Very efficient farmers.

Q. Do they engage in all of the modern practices to develop their property? A. They do.

Q. Is there a good deal of summer fallowing? A. There is.

Q. Crop spraying? A. There is.

700 Q. And they do diversified farming when labor will permit? A. I believe so.

Q. The people that are here that you have run across have been here, and their families before them, is that right? A. They have.

Q. It is not a trial? It is an established growing agricultural area, is it not? A. It is.

Q. Would you say the railroad is an important of the whole set-up here in this country? A. It would seem to be very important.

Mr. Loble: That is all.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Walsh, in your purchasing of grain, is that on a cash basis? A. On a cash basis; yes.

Q. Just what is that? A. We are not qualified to handle Government storage. We take stored grain, and we buy grain for shipment, that is all.

Q. You can take grain and store it, and later,—he takes a storage ticket and sells it when he wants to? A. Yes.

701 Q. And, of course, if he wanted to sell it when he first came in, he could sell it? A. He can sell it at any time.

Q. I mean that combination is what you mean by a cash basis? A. Yes, sir.

Q. And I think you said you have been here two or three years? A. I have been here two years.

Q. And this country, of course, is recognized as one of the first class farming areas in Montana? A. There is no doubt about it.

Q. And the farmers likewise are among the first class farmers of the state? A. They are.

Q. The country around Valier will show that to be so, if you will drive around here? A. There is no doubt about it.

Q. This whole area, Valier and Conrad, this whole community? A. It is all a good community.

Mr. Jardine: I think that is all.

#### Redirect Examination

Q. (By Mr. Loble:) Not only through the past, but you think this area has a great future, don't you? A. I think it has.

Q. and,—

Mr. Loble: I think that is all.



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## Recross Examination

Q. (By Mr. Jardine:) Well, with reference to the future, is there anything that you think is going to,—I will withdraw that. Do you think that the farming population has increased in this area in the last,—well, of course all you would know is in the last two or three years? A. Well, it has increased,—in what period?

Q. Well, do you know anything more than the last two or three years? A. Oh, I have been familiar with the Valier territory since the town of Valier was started.

Q. Well, do you think it has increased in population, say in the last ten or fifteen years? A. I don't think it has.

Q. Pretty stable,—I mean the farm population? A. The population has probably decreased, or stayed static, but the farming units have been larger.

Q. The farming units have been larger, but the population, in your estimation, hasn't increased? A. It is about the same.

Q. It is about the same. The town of Valier has increased somewhat in the last few years? A. Oh, yes.

Q. Especially since the war years? A. Yes.

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Mr. Jardine: That is all.

## Redirect Examination

Q. (By Mr. Loble:) If the railroad goes out, and as testified by Mr. Seifert last night, those who have water stock where they can't hang onto it and gradually give up the Ghost, the population will be less still, won't it? A. Well, I am not prepared to pass judgment on that.

Q. And you would finally get just one big company here, and very few people.

Mr. Loble: That is all, I believe.

Mr. Jardine: That is all.

Examiner Bernhard: The witness is excused.

(Witness excused.)

Mr. Loble: Call Mr. Boyd.

GEORGE BOYD, was sworn as a witness, and testified as follows:

## Direct Examination

Q. (By Mr. Loble:) State your name, please. A. George Boyd.

Q. And your residence? A. Valier, Montana.

Q. Your occupation? A. Grain buyer.

Q. For what company? A. I am with the Greeley Elevator Company.

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Q. Will you spell Greeley for the Reporter? A. G-r-e-e-l-e-y.

Q. Mr. Greeley was up here yesterday, the senior member of the firm? A. Yes; he was here, but he couldn't stay.

Q. He couldn't say. Is he the founder of the company? A. He is the founder of the company.

Q. Is it an extensive elevator company? A. Very small line company. I think we have twenty-three elevators.

Q. Twenty-three elevators? That is considered a small line? A. Very small.

Q. Compared with the Farmers Union and the International,—how do they run,—and Cargill? A. I wouldn't venture to say but the International, I think, is one of the largest elevator lines in the United States, and probably in the world.

Q. That is the one that is located down in Williams? A. That is right.

Q. How about Cargill? A. I am not so familiar with Cargill. I never run into him until I came down here to Valer. They only have a few elevators in this part of Montana.

705 Q. They admit they are the fourth largest grain buyers?

A. They are a big outfit all right, but I don't know how big.

Q. But this is just a small Montana Company, your company?

A. Yes; it is totally owned by the Greeley family out of Great Falls. It is run by Mr. Greeley and his three sons.

Q. And they live in Great Falls? A. Yes, sir.

Q. An old family there? A. Yes, sir.

Q. What is the capacity of your plant? A. Oh, about eighty-five thousand bushels.

Q. What do you think is the approximate replacement of your property there? A. Well, Mr. Greeley and I talked that over the other day, and he said we wouldn't replace the elevator, without the annexes, for less than thirty thousand dollars.

Q. What else do you have down there? Do you have anything else except just an elevator? A. Well, we have annexes there.

Q. What are the annexes? A. They are just big boxes to hold wheat, is what they are.

Q. How many cars do you,—do you have any trouble at all getting cars? A. Naturally, yes.

706 Q. How many cars have you got on order? A. Well, I think I have fifty cars ordered right now.

Q. How many have you gotten? Last month? A. Last month I had fifteen.

Q. And this month? A. I have had two so far this month.

Q. It isn't a drop in the bucket, is it? A. No.

Q. Just the bucket,—not even a drop? A. I could use fifty cars in two weeks.

Q. You corroborate the other men who testified as to the condition that exists here now with the elevators being plugged, do you not?

A. Well, I imagine I do. I wasn't here.

Q. Oh, you weren't here? They have all said the elevators are plugged? A. Yes, they are.

Q. There is no way for you to put any more grain in there, is there? A. No; not unless I get the cars to ship it out.

Q. And you can't get the cars? A. No.

Q. What could be done with the Greeley elevator in the event the railroad was abandoned? What do you think could be  
707 done? A. Well, the chances are that it will be moved to some other point.

Q. Can it be moved in one,—as one unit? A. Well, they do move elevators in one unit, but it is quite a long ways to move an elevator from Valier to another place. I don't know whether they could or not.

Q. You could either tear it down, or move it as one unit? A. Well, if they tore it down I imagine it would cost almost as much to build a new elevator, if you tear it down now a days. It has been done that way.

Q. You do a considerable volume of business here, do you not? A. Around two hundred thousand a year.

Q. And the other concerns do that much, or more, don't they? A. I think they do more.

Q. The others do more? A. Yes, sir.

Q. So far as you are concerned, that would cease, would it not, that income if you had to quit here? A. Oh, yes.

Q. How long have you been in this business? A. Twenty-eight years.

Q. You have been in other places in Montana? A. Oh, yes.

Q. Have you worked for Greeley long? A. I have worked  
708 for them for twelve years.

Q. And what other elevator companies have you worked for? A. I worked for the Occidental Elevator Company, and I ran a Farmers' elevator for several years.

Q. You know Montana quite well, do you not, from an agricultural standpoint? A. Yes; I have been here since 1912.

Q. I will ask you if it isn't true that Valier and the surrounding territory is one of the best agricultural countries in this state? A. Well, I have been over practically every part of the state, and I think I think it is the very best section of Montana for general farming.

Q. Are the farmers good farmers? A. The very best.

Q. Are they people who are alert to new ideas and improved ways of farming? A. Yes; I think they are exceptionally so.

Q. They, and their families have been here before them, is that right? A. There seems to be a lot of old-timers.

Q. And the youngsters, such as we see here at this hearing, are going to follow in their father's footsteps? A. They all seem to want to stay here.

Q. It is going to be a serious matter for them, and for you, 709 if this railroad is taken out? A. I know it will be for me. I can assure you that.

Mr. Loble: You may examine.

#### Cross Examination

Q. (By Mr. Jardine:) Have you made any inquiry as to whether or not there is a possibility of handling this grain out of here by,—

Mr. Loble: Oh, pardon me.

Mr. Jardine: Go ahead.

Mr. Loble: I forgot to,—I want to ask you something I don't know anything about,—the grain doors.

Mr. Jardine: Is that unusual?

Mr. Loble: I thought you had died. I hadn't heard anything from you all day. I am glad you woke up. I talked about the one big ranch and you never said a word. I thought you would be out of your chair.

#### Direct Examination (Cont'd:)

Q. (Mr. Loble, continuing:) After being so rudely interrupted, I want to ask you about grain doors. Tell me something about grain doors. What is your problem here about grain doors? A. Well, the problem is,—ordinarily, why, grain doors are piled up at the various elevators for us so when a car comes in we can take the eight doors,—or if it takes more we take them. We have the piles there for our convenience, and we use whatever is necessary. Some 710 doors,—some cars need to be patched, and lots of times we use grain doors for that purpose. At the present time,—when this first came up the Great Northern came in and removed all the doors in town. There wasn't a door left at any of the elevators. Now, they put ten doors in each car at Conrad,—the Great Northern does that, and then when we order a car the car comes with ten doors, which is O. K. I don't have to lift them off the ground and carry them into the car, but occasionally, for instance, like yesterday I had a car I needed fourteen doors in. Fortunately, I had a few cars I only needed eight doors in, so I threw out a couple from each car, and I had these extra four doors that I needed. If I hadn't had them I would have had to wait until they brought me some more doors.



Q. Now, having been examined by someone who knows nothing about it, I will now turn you over to one who knows less, Mr. Jardine.

### Cross Examination

Q. (Mr. Jardine:) Mr. Boyd, does your company have an elevator in Conrad? A. Yes, sir.

Q. Do you know whether they inquired into the possibility of shipping grain by truck from here to Conrad? A. We have discussed it.

Q. What? A. I say we have discussed it.

711 Q. Have you determined whether or not it is feasible to do so? A. Well, we don't think it is practical, of course. It is just an extreme situation, and, of course at the present time it would be impossible because that elevator is in the same condition we are. They haven't room to take our grain because they have lots of grain of their own.

Q. But, of course, if Conrad gets fifty per cent, or approximately, and Valier gets fifty per cent of the cars, if they allotted all of those cars to Conrad, your elevator in Conrad would be getting double the amount of cars, or approximately so, and the elevator down there could be used to transport grain from here to there and put it in the cars, couldn't it? A. You might be able to do that, but the chances are the other towns on either side of Conrad would make quite a squawk if we got more cars,—Brady, for instance, or Ledger, or Shelby.

Q. Well, if they were getting the cars for both the Conrad and the Valier areas, there is no reason why they should squawk any more than they squawk now, is there? A. No; of course, we are entitled to cars up here now.

Q. Of course everybody is squawking about cars now? A. That is true.

Q. It isn't only the Conrad and the Valier areas, is it? 712 A. That is true. I can't see where in the future Conrad would get any more than their ordinary share of cars, regardless of whether this elevator would go.

Q. You would figure the number of cars coming to Conrad would be increased even though your cars were completely taken from Valier? A. Everybody thinks they are getting the short end of the car deal.

Q. That has been the history all through the car shortage, hasn't it? A. Yes.

Q. Everybody thinks the other fellow is getting all the cars and he isn't getting any? A. I always figured I got less than my share.

Q. Well, maybe this man from the Farmers Union, when he found out you got fifteen cars and he only got three, one month,—

Mr. Entorf: George and I have been working together on this for a long time. He is about the same as I am. I wouldn't testify for him.

Mr. Jardine: I think that is all.

Mr. Loble: That is all.

(Witness excused.)

Mr. Loble: Call Mr. Roberts. By the way, Mr. Jardine, 713 will you stipulate that Mr. W. T. Greeley, of Great Falls, the owner of this line of elevators, if he were here,—he was here at the beginning of the session,—and that if he were here to testify he would testify substantially as Mr. Boyd did?

Mr. Jardine: Yes; we will so stipulate.

JOHN E. ROBERTS, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Mr. Roberts, what is your full name? A. John E. Roberts.

Q. Mr. Roberts, you live where? A. Three miles north and three-quarters of a mile west of Valier.

Q. Your business? A. Farmer.

Q. Approximately how many acres of land do you operate? A. Between thirteen and fourteen hundred acres.

Q. And what type of commodity do you grow? A. Small grains.

Q. How long have you lived in this community? A. Thirty-two years.

Q. And where did you live before that? A. Missouri.

Q. How did you happen to come out here? A. We heard 714 about this project from friends and advertising the Great Northern put out,—Farm Sales.

Q. You saw these various types of pamphlets you saw me show here last night? A. Yes.

Q. They were sent to you? A. No; they were kind of second hand.

Q. Were your folks here before you? A. No; they came at the same time.

Q. You have been here since what year? A. 1917.

Q. 1917. Was your father's sister out here,—I believe you told me? A. Yes.

Q. She was here in 1909? A. 1909 or 1910, thereabouts.

Q. Were you a farmer, and were your family farmers down in Missouri? A. Yes.

Q. And did you come out here when you heard about this colonization plan of the Carey Land Act that was advocated by the Great Northern and the others interested? Did you come out pursuant to that? A. Yes.

Q. And how did you come out? Did you come out on one  
715 of these excursions? A. No; I came on passenger train.

Q. State whether or not it was represented to you then there was a railroad here, transportation? A. That is right.

Q. How important was that to you in making your decision to come to this locality? A. Well, we wanted to be near civilization, near rail transportation.

Q. It made a great difference as to whether you would come or not? A. I don't believe we would have come if we had been twenty or twenty-five miles from a railroad.

Q. You don't want this railroad discontinued and have to go back to Missouri, do you? A. Heaven forbid.

Q. Now, state whether or not, in your opinion, seriously, Mr. Roberts, public necessity and convenience require that this railroad stay? A. I think it does. I can't imagine this country without a railroad. I believe it has been testified before, and talking to different people, a lot of them would have to curtail their operations. Our land values certainly would go down; our taxes would be  
716 . . . raised to take care of the same expenses, and as to this testimony of trucking, I don't know of any community of like size that depends on that kind of transportation. I don't think it is feasible.

Q. As time has gone on there are certain things in connection with the railroad that modern conveyances have changed, such as passenger transportation; that is true, is it not? A. That is right.

Q. State whether or not the whole economy of Valier and this irrigation project, the raising of grain, feeder lambs and the like, isn't built around transportation and the ability to take these great bulk products out by railroad cars? A. I think it is.

Q. It isn't feasible to transport so much of this bulky stuff by truck? A. No; it isn't.

Q. You are identified with the Farmers Union elevator, are you not? A. I am.

Q. You are one of the officers, if there are officers? A. Yes.

Q. What office do you hold? A. Secretary-treasurer.

Q. And as such, do you corroborate what was testified to by Mr. Entorf? Do you corroborate what he says? A. Yes.

717 Q. And did you make some inquiry about the number of cars at Pendroy? A. Yes; we did.

Q. There were how many? A. We were told by the manager at Pendroy that in the month of June they received twenty-nine cars. Our elevator received three.

Q. Pendroy is how big? A. As the gentleman testified last night, if they were all home here might be a dozen there.

Q. And how many elevators are there there? A. I am not right sure. I believe there is three.

Voice from Audience: Three.

Q. Three. Now, with trucks, the mechanical problems involved,—there are mechanical problems involved in handling grain, is there not, loading and unloading? A. Yes.

Q. In the first place, if these elevators had to quit here, you didn't have the railroad, where would you take your grain? A. I wish somebody would tell me. I haven't any idea.

Q. There will be people around here with a million bushels of grain on trucks, or something of that kind,—they can't take it to Conrad, can they, the way things are now? A. Not the way things are now.

Q. Shelby? A. I have tried that. It don't work.

718 Q. The only place you could go, so far as you know, would be to go all the way to the terminals; is that right? A. That is right.

Q. When a farmer is presented with a transportation problem of that kind, you farmers out here, is that a change of your whole system of economy? A. That is right.

Q. Do you corroborate what others say that this is, in your opinion, the best,—one of the very best agricultural areas in Montana? A. I believe it is one of the best.

Q. And it is progressive and alert? A. It certainly is.

Q. You have a combination here in this community of both the town and the country working together; isn't that right? A. That is right.

Q. As testified to by the activities of the Club I have the honor to represent here, the Valier Community Club? A. Yes; they have been together for a long time and still going.

Q. They don't work against each other; they work with each other? A. That is right.

719 Q. Now, if I haven't asked you,—I believe I did ask you,—how this appeals to you: Do you feel, as one who came here, that it is a breach of faith, after you have come here and established yourself, and others like you, for the railroad to suddenly, or at any time, pull out, without some other efforts being made in the line of transportation? A. It is very much so. I think it is very much of a breach of faith.

Q. Some of these men here you have worked with for years, have you not, Mr. Roberts, Mr. Taylor, and some of those men,—they have been here for years? A. Yes; I have known them all for years.

Q. Kind of one big family, coming and leaving? That is what it amounts to? A. That is what it amounts to.



Q. What do you think would happen to a town like Valier with the railroad gone? A. I never had the experience, but I imagine that it would go down hill pretty fast.

Q. Do you have this in mind, Mr. Roberts, that a town that has never had a railroad builds itself in a certain way. You know towns,—I think Dupyer doesn't have a railroad, does it? A. No; it doesn't.

Q. They build themselves in a certain way, do they not?  
720 A. That is right.

Q. But after a town has built itself, and it has been built by a railroad and adapted to a railroad, and then take the railroad away, state whether or not there are many, many things happen to that town? A. I think that is commonly referred to as a Ghost town.

Q. That is right. Your lumber business you have heard about, instead of a store, the type of stores you now have you would just have kind of a general store, gas station, and the like, just enough to take care of the needs of the people in that immediate vicinity? A. That seems to be it.

Q. You don't want to see that happen here, do you? A. I certainly don't.

Mr. Loble: You may examine.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Roberts, you base your testimony, do you not, on the opinion that no other form of transportation can take the place of the railroad? A. That is right.

Q. In Valier? A. That is right.

Mr. Jardine: That is all.

Mr. Loble: Thank you, Mr. Roberts.

Examiner Bernhard: One question: How many bushels of grain do you ship yourself? A. Myself?

721 The Examiner: Yes, roughly?

The Witness: Between fifteen and twenty thousand bushels a year.

Mr. Loble: All over this road? A. All over this road.

Mr. Loble: Thank you. That is all.

Mr. Jardine: No further questions.

Mr. Loble: Then that is all.

(Witness excused.)

Mr. Loble: Is Mr. Gossard here?

Examiner Bernhard: We will adjourn at this time until one thirty this afternoon.

(A recess was taken from 12:10 p.m., Wednesday, July 13, 1949, to 1:30 p.m., on the same date.)

Examiner Bernhard: Let the record show, Mr. Reporter, at this time that there is no exhibit numbered seven. That number was not, by inadvertence, used in the numbering of the exhibits.

Mr. Loble: In lieu of the witness I last called, I will call Mr. Wentworth, who has to return to work.

WILLIAM WENTWORTH, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please?

722 A. William Wentworth.

Q. And your residence? A. Valier, Montana.

Q. How long have you lived at Valier? A. For thirty-two years.

Q. And what is your occupation, Mr. Wentworth? A. Engineer on the Montana Western Railway.

Q. And how long have you been an engineer on the Montana Western Railway? A. Since August 1st, 1947.

Q. Before that time were you working for the railroad in any other capacity? A. Yes, sir.

Q. What is the total time that you have worked for the railroad? A. Sixteen years.

Q. In that capacity of having worked for this road, and now as engineer, I assume that you have familiarity with all of its operations? A. Yes, sir.

Q. State whether or not there is a large amount of traffic moves over this railroad? A. There is.

Q. And the community here is a prosperous growing community, is it not? A. Yes, sir.

723 Q. Farming and agriculture is of the best? A. I think it is.

Q. Now, from an operating standpoint, tell us what kind of equipment you use for pulling your cars? A. We use a gas-electric and a steam engine.

Q. Do you have any difficulty with that type of equipment? A. Well, at times we have more than we can pull with this gas-electric.

Q. The gasoline engine is limited in its pulling power, is it not? A. Yes, sir.

Q. And the steam engine, what are the difficulties you have so far as it is concerned? Let me put it this way: I was talking to you just before you took the stand, and I asked you if you would suggest an operating improvement on the road and you told me so, and will you tell us what that is? A. They need a Diesel locomotive here, something that would weigh under a hundred tons, that would handle six carloads out of this town, be able to pick up two ad-

ditional cars at Williams, and be able to bring in twelve or fourteen empties on the return trip.

Q. Are you able to do that with the equipment you have? A. No.

Q. In other words, you have to make more than one trip with the equipment you have? A. We have to make more than 724 one trip if there are more than four cars.

Q. What other economies are involved in a Diesel? A. If you have a Diesel you could operate from either end it would do away with a wye.

Q. A Diesel has its power where? A. They have two Diesel motors in them. They need something of about three hundred and fifty horsepower, two of them, and you could operate your machine from either end, and would not have to turn it. And I think your fuel, your Diesel fuel, is considerably cheaper than gasoline. I think you could operate it considerably cheaper.

Q. The objection that was raised about running a piece of equipment backwards doesn't apply to a Diesel, does it? It runs either way? A. In that case you can operate either way. The radiator is in the roof; they wouldn't heat.

Q. The radiator is in the roof of the Diesel? A. Yes.

Q. Without the use of a wye you could run this engine to Conrad and back from Conrad? A. Yes; without turning, either direction.

Q. What operating economy would occur in connection with a night watchman? A. Well, they need, they wouldn't need 725 one, so far as I can see, in cold weather.

Q. Diesels will be kept where? A. It could be kept, they have a heating system built right in it. I imagine that is a fuel oil heating system, and it keeps that water from freezing on it.

Q. Could the Diesel of the capacity you have mentioned run upon this road as it is? A. If it weighed under a hundred tons I think it could.

Q. You are familiar with the suggested eight-year plan for the rehabilitation of the road, are you not? A. Yes.

Q. That plan would develop considerable improvement in the road, would it not? A. It would.

Q. And with that plan, and the use of different type of equipment such as you mention in your opinion would substantial economies in operation occur? A. It would.

Q. Knowing the town of Valier and its surroundings, and the amount of traffic you move out and the amount that comes in, state whether or not, in your opinion, it is necessary, — it is for the public necessity and convenience that this road remain here? A. Yes, sir;

I think it should remain here.

726 Q. Go ahead, please. A. On this Diesel, if you had the two engines, the two Diesel engines in this machine, and you

were running light, that is, you didn't have tonnage to pull, you could cut one of those engines out and operate it on one engine only.

Q. And that would likewise be an economy? A. It would.

Q. How many cars could you bring back with the Diesel empties? A. You would need a Diesel big enough to handle twelve to fourteen empties.

Q. How many can you handle now? A. Four with the gas-electric.

Q. Four empties? A. Four, with the gas-electric.

Q. No more? A. That is all I can pull.

Q. How many full cars? A. Going out of here, two. You can pick up an additional car at Williams.

Q. And the Diesel would eliminate your steam engine, would it not? A. It would eliminate both of them, the steamer, and the gas-electric.

Q. Neither one of which is economical or suitable for this  
727 operation, is it? A. At times, no, they are not.

Mr. Lobte: You may cross examine.

#### Cross Examination

Q. (By Mr. Jardine:) You say a Diesel of the kind that would be necessary would be something under a hundred tons, Bill? A. I think so, at present.

Q. It would be necessary, you say, to have two engines in it? Is that what you call them? A. Well, as near as I am acquainted with these Diesel engines that they have on the Great Northern, they have two engines.

Q. Two engines in the one unit, you mean? A. Yes.

Q. The Great Northern operates mostly with a number of units in the train? A. Yes; up to four.

Q. But what you are talking about is just the one unit? A. A single unit.

Q. And you figure it would be necessary to have one unit only that had two engines in the unit? A. Yes.

Q. In order to have the carrying capacity to haul the loads, and in hauling a load out of here how many cars would you say  
728 such a unit could carry? A. I would say six. That would be about four hundred tons.

Q. That is, six carloads, for instance, of grain out of here? A. Yes.

Q. And at Williams you could pick up a couple more? A. Two or three more.

Q. And on the return trip such a unit if it was used to capacity could bring back around twelve to fourteen cars? A. I believe it could.



Q. Do you know anything about the cost of those units,—I mean of one unit, a Diesel unit? A. I couldn't say.

Q. You are sure though that they cost more than this five hundred dollar locomotive that they got? A. I am very sure.

Q. And you operate both the locomotive and the gas-electric? A. Yes, sir.

Q. And sometimes either or both can cause quite a lot of trouble because of their condition and age? A. That is right.

Q. Not only can but do, and you have the job of making any repairs that can be made here locally? A. That is right.

Q. Not only have it, but do it? A. Yes.

729 Mr. Jardine: I think that is all.

Mr. Loble: Thank you. May he be excused, Mr. Examiner?

Examiner Bernhard: Just a moment. I have just a question or two. Do I understand you to say that in your opinion a Diesel locomotive of a hundred thousand capacity could be operated on the tracks in their present condition?

The Witness: Less than a hundred tons.

Examiner Bernhard: Yes, less than a hundred tons, I mean.

The Witness: We haul carloads out of here that will weight around seventy tons,—lots of weight on the line now. One hundred and twenty thousand capacity, that is sixty tons, plus the light weight of your car, which is another twenty-three tons.

Examiner Bernhard: Thank you, that is all.

(Witness excused.)

Mr. Loble: Call Mr. Gossard.

E. A. GOSSARD, was sworn as a witness; and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. E. A. Gossard.

Q. And your residence? A. One-half mile west of Valier.

Q. Your occupation? A. Farming.

730 Q. And what is the extent of your farming? A. Small grain.

Q. Approximately how many acres do you operate? A. About seven hundred and fifty.

Q. And approximately how many bushels do you get from your place? A. Well, ten to twelve thousand. We strip our land. We farm half of the ground each year.

Q. You farm half of it each year? A. Yes; we strip it.

Q. You have about fifteen hundred acres then? A. No; seven hundred and fifty, with about three hundred and sixty in crop each year.

Q. You strip farm, or summer fallow the other half? A. Yes.

Q. The idea of that, for the record, is that you produce better crops when it remains dormant one year, does it not? A. Yes, sir.

Q. Where did you come from here? A. Wayne, Nebraska.

Q. And in what year? A. 1918.

Q. And was this locality colonized by quite a number of people from Nebraska? A. Yes.

731 Q. And did you learn of this area from other people from Nebraska? A. There was an agent in there.

Q. An agent from what railroad? A. Well, he was up here selling land,—Charley Heise of Craig, Nebraska.

Q. And he had literature on this place? A. Yes.

Q. And among other things did you learn that there was a railroad here, the Montana Western? A. Yes.

Q. State whether or not your coming here was influenced to some extent by that? A. Very much so.

Q. Very much? Would you have come to a country that didn't have a railroad? A. I am afraid not.

Q. After you came here you went into the farming business, did you not? A. Yes, sir.

Q. And other friends of yours from Nebraska lived here,—other relatives? A. Yes.

Q. Now, in your opinion, knowing,—Strike that, Mr. Reporter.

All of your products, your grain, you ship over the Montana  
732 Western? A. Yes.

Q. Do you use the elevators here? A. Yes, sir.

Q. In your opinion does public necessity and convenience require that this railroad remain here? A. Very much so.

Q. You feel that the railroad is a part of the entire program,—an integral part of the whole thing? A. Yes, sir.

Q. Do you corroborate the other witnesses who speak of this community as a prosperous growing community? A. Yes.

Q. You consider it a good farming area? A. Very good; none better.

Q. And the people who operate here, are they people of high standing as men and citizens and farmers? A. Very much so.

Q. What do you think, Mr. Gossard, in your opinion, would happen to your holdings, and other holdings, if the railroad was taken out of here? A. Well, I think our land would decrease in valuation considerable.

Q. Well, would you care to estimate the percentage? A.

733 Well, I think fifteen to twenty-five dollars, per acre.

Q. This land here now is generally worth about how much an acre? A. Well, this piece just east of town here, less than two years ago sold for a hundred dollars an acre, dry land.

Q. Dry land? A. Dry land, and an unimproved place.

Q. An unimproved place sold for a hundred dollars an acre? A. Yes; dry land.

Q. Is the country such that it is easily adaptable to change in agricultural conditions, such as diversified farming? A. Yes.

Q. You have some familiarity with beets? A. How is that?

Q. You have some familiarity with the growing of beets? A. No; I don't raise beets.

Q. You don't raise beets, but you know that they are important, and a railroad is important to beets, is it not? A. Very much so.

Q. The difficulty of getting cars affects you farmers a great deal, does it not? A. Very much.

Q. It affects the revenue of the railroad, too, does it not? A. I think so.

Q. In other words, there is lots of business here,—lots of stuff to be moved if cars were supplied to move it; is that right? A. I have grain in my bin now I can't haul to market.

Q. This year is a rather unusual condition, is it not? A. I think so.

Q. With the elevators plugged? A. Yes.

Q. But pretty generally do you have trouble? A. Well, it seems like every year I haul in at the beginning of the harvest season before I get through harvesting because I don't have enough storage room at home to hold my grain.

Q. And you haul often from your combine into town? A. Yes, sir.

Q. Is it necessary under the Commodity Credit arrangement that you have storage,—that your grain be under cover? A. No; it isn't under cover at the present time.

Q. It isn't under cover? A. No.

Q. But, generally, it should be, should it not? A. Yes.

Q. How many bushels an acre is the maximum that you have ever heard of around here, or on any of this land that you have got? A. I have had wheat that made fifty-seven bushels an acre.

Q. Fifty-seven bushels an acre? A. That is the best yield.

Q. That is a very good yield, is it not? A. Yes, it is,—winter wheat.

Q. Was that on irrigated land? A. No; dry land.

Q. And what has your observation been as to what the maximum yield on irrigated land has been? A. Well, I have irrigated land, too, but it is all stripped and I farm it dry, except I irrigate my hay ground.

Q. And do you have good results from your hay ground? A. Very good. The alfalfa yields from two and a half to three tons per acre.

Q. And that is a good yield, is it not? A. Yes; very good.

Q. So far as crop failures are concerned, or things of that kind, that is practically unknown to this country? A. That is right. I have been here thirty-one years, and I have had a pretty good crop every year.

Q. And from your observation that has been true generally of your surrounding neighbors, has it not? A. Yes, sir.

Q. The transportation,—this matter of abandoning the railroad is a serious matter to you? A. I think it is,—very much so.

Mr. Loble: You may cross examine.

736

## Cross Examination.

Q. (By Mr. Jardine:) With your hay crop, do you sell it, or do you feed your hay? A. Well, I used to feed it, but at the present time I have no stock.

Q. You sell it locally, or otherwise? A. Yes, sir.

Q. You sell it locally? A. Yes, sir.

Q. And the balance of your land you farm is dry land farming? A. I have two hundred irrigated and five fifty dry. It is stripped.

Q. But I think you said except for the hay crop, you farm it all dry? A. Yes, sir.

Q. And your opinion with reference to the convenience and necessity of the continuance of the Montana Western Railway is based on the assumption that no other means of transportation at a like, or approximate, cost is available, is it not? A. What do you mean?

Q. Well, if other means of transportation of a like or approximate cost was available, the necessity of this railroad wouldn't be here, would it? A. I presume not.

Mr. Jardine: I think that is all.

737

Mr. Loble: That is all. Thank you.

(Witness excused.)

Examiner Bernhard: Will you excuse me a minute? I would like to show counsel a telegram I have just received from the Governor of the state of Montana.

Mr. Loble: Call Mr. Peterson.

Examiner Bernhard: I would like to read this telegram into the record, unless there is serious objection on the part of counsel?

Mr. Jardine: We have no objection.

Mr. Loble: And we have no objection, Mr. Examiner.

Examiner Bernhard: (Reading:)

"Helena, Montana, July 13, 1949.

"C. A. Bernhard, Examiner in charge of I. C. C. Hearing, Montana Western Railway, Valier, Montana.

"I intended to appear personally at hearing but was unable to do so. I join with the Valier Community Club members and others,



in protesting abandonment of Montana Western Railway. Pondera is one of the state's finest counties and the loss of this railway will occasion great hardship and will mean the loss to farmers and merchants in that area of a direct transport system. I urge abandonment be not permitted.

"John W. Bonner  
- Governor of Montana."

738 Mr. Loble: Call Mr. Oscar Peterson.

OSCAR PETERSON, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Your name is Oscar Peterson, is it not? A. Yes, sir.

Q. And you live where, Mr. Peterson? A. Two miles east, and seven north, of Valier.

Q. And you are a farmer? A. Yes.

Q. And about how much acreage do you operate? A. I am kind of on the way out,—I am farming four hundred acres now, that is, four hundred acres in crops and four hundred in summer fallowing.

Q. You have operated more in the past? A. Yes.

Q. Are members of your family operating more? A. Yes, my boys and my son-in-law are operating, I suppose, a couple of thousand acres.

Q. You are one of those who came here in the early days, are you not? A. This is my thirty-sixth year.

Q. And how did you come out here? Where did you come from, rather? A. Craig, Nebraska.

739 Q. Were you headed for here all the time, or did you change? A. No; we were headed for here. We had thought,—we had heard a lot about homesteading in Montana, and thought of coming somewheres, and then we got some literature from the Great Northern telling us about this Valier project, and after we read that over, that was the promised land.

Q. And so far as this country is concerned it is a promised land, is it not? It is a good country? A. That is right.

Q. You were,—I think you told me you intended to go to Grass Range? A. Yes; that is where we had in mind before we got this literature about this Valier Project. When we got that, it had everything,—good soil, water, and railroad, schools, churches, and so here is where we come.

Q. And practically over night you abandoned your idea of going to Grass Range? A. We did.

Q. Were you about ready to leave for Grass Range? A. Yes; we were going to leave the next day, and we got this literature the night before, and we come straight to Valier.

Q. That is very interesting. Now, you remember Mr. Wyman that,— A. Wayman.

Q. Wayman. He was the,— A. (Interposing:) He was 740 the agent for the Great Northern and Valier Farm Sales Company.

Q. The Valier Farm Sales Company was the company before the Valier Company here? A. That was the selling agency for the Valier Land and Water Company.

Q. Did Mr. Wayman come out to your place? A. He did after this. He hadn't been there before; he came afterwards,—he came to the county and enthused at least about thirty families who came here later from that same county.

Q. Are you the gentleman who told me you sent in your down payment to draw on an allotment? A. Well, no. We made a down payment on eighty acres of land. We were here first in the spring of 1913,—or in the fall of 1913, and then we moved here in the spring of 1914.

Q. Well, Mr. Peterson, you came on out here, and when you came did you,—the fact there was a railroad here, the Montana Western, weigh heavily with your coming? A. It sure did. That is what the literature showed, and that is one of the reasons we thought this was the place to come, where there was sure to be a railroad, and a school for the children.

Q. You raised your family here, did you not? A. Yes. 741 Q. And your children are now following in your footsteps in the farming business? A. Yes; they are all farming out there close to us.

Q. And have you always taken the Montana Western Railway to be a part of this community as much as anything else? A. Absolutely.

Q. The irrigation project, the water company, the Montana Western Railroad was to you, and has it always been one complete unit? A. Well, I could say so, yes.

Q. And in your opinion, Mr. Peterson, does public necessity and convenience require that that railroad remain here? A. Oh, yes, I think so, absolutely.

Q. Do you join with the others in the testimony that has been offered here as to this being a fine agricultural country? A. I sure do.

Q. Do you join with the others in their testimony that Valier is a progressive community, the farmers are progressive and forward-looking, and that the past has been good and you think the future

will be good? A. Yes; I do. The near past has been good, but the early past wasn't always so good.

Q. You refer particularly to prices,—the near past has  
742 been very good on prices, has it not? A. It has been good on price and production, and in every way we have been going forward. We didn't always do that.

Q. No. You had tough days here in the old days, didn't you? A. That is right.

Q. But you stayed? A. Yes; we couldn't do anything else.

Q. You couldn't appeal to the I. C. C. to abandon yourself, could you? A. No.

Q. No, w—

Mr. Loble: I think that is all. You may examine.

Examiner Bernhard: I would like to ask you, Mr. Peterson, whether your sons and son-in-law are separately testifying here today?

The Witness: No, I don't think so. Not that I know of.

Examiner Bernhard: Approximately what are the shipments of yourself, and of your boys and your son-in-law over this railroad per annum?

The Witness: Well, last year I produced about fourteen thousand bushels myself.

Examiner Bernhard: Of grain?

The Witness: Yes. And I would say the other three,—well, they must have had, the three of them must have had twenty-five thousand bushels. I am just approximating that.

743 Examiner Bernhard: That is all right. That is all.

### Cross Examination

Q. (By Mr. Jardine:) Oscar, the promised land came at last, didn't it,—there were some pretty tough times in between, wasn't there? A. Yes; that is right. You and I know about that.

Mr. Loble: Does he know about that time? A. He knows about me.

Mr. Jardine: I know about quite a few hundred of them around here. A. If it hadn't been for you, I probably wouldn't have been here. I will give you credit for that.

Q. Well, my unfortunate job in the early days was trying to collect money from fellows that didn't have any, wasn't it Oscar? A. That is right. You had lots of chances to kick me off.

Q. But I don't think we tried to kick you or anybody else off that really tried to make a go? A. No; you didn't, and I don't forget some things.

Q. I know you don't, Oscar. Your opinion as to the necessity and convenience of this railroad is based on the assumption that no

other form of transportation is available at like cost or expense, isn't it? A. Well, yes, that is the fact. You suggested we would have a,—if it could be trucked out of here, where are we  
744 going? If we go to Conrad there is no place to unload it, and as for trucking it to the terminals, I would say that is out of the picture.

Q. Oscar, one of the things I had in mind, for instance, was the Gallatin Valley Milling Company,—they have an elevator here and one at Conrad. Now, assuming,—I don't know it to be a fact, but my understanding is that Valier gets about one-half of the number of cars that come into Valier and Conrad,—now assuming that all of those cars instead of coming here, that there wasn't a railroad here, but were allotted to Conrad. If they could truck the grain from the Gallatin Valley elevator here and put it in so they could withdraw grain out of the elevator there, they could still draw the same number of bushels out of the one elevator,—I mean to put into grain cars, that came out of the two? A. Well, there is another angle to that: Supposing, say, on my own, say fourteen thousand bushels, and I tried to haul that to Conrad. Well, I haul about a hundred and sixty bushels, about, on my truck and I get down there and there is a lot of other guys hauling down there, and I get in a line of about half a mile waiting to get into the elevator, and how long would it take me to haul that fourteen hundred bushels?

Q. Well, Oscar, that isn't what I meant. I mean if you haul to Valier, the same as you have in the past, and the elevator  
745 instead of shipping it out in a grain car here, shipped it out in a grain tank from here and put it in the elevator at Conrad? A. Well, it is O. K. by me, just so they get rid of it, but I doubt if it will work.

Q. Well, that is what I had in mind. I know you couldn't begin to haul your own grain down to Conrad and get down there and find fifteen or twenty fellows ahead of you,—you would never get it done? A. No; that is right.

Q. I will admit there are problems in connection with, and if it could be worked out that the other transportation would take the place of the railroad, public necessity and convenience wouldn't exist for the railroad? A. Well, that is right.

Mr. Jardine: I think that is all.

#### Redirect Examination

Q. (By Mr. Loble:) You don't know how many motor cars it will take to take the place of seven hundred and fifty or eight hundred railroad cars, do you? A. No; I have never figured it up.

Q. There would be quite a parade down there? A. Yes, sir.

Q. And do you know what the capacity of these grain trucks



are? A. No; I don't know what those big trucks do haul,  
746 but I guess some of them haul quite a lot.

Q. You don't know any big grain haulers here, do you?  
A. Not at the present.

Mr. Loble: I think that is all.

Mr. Jardine: That is all.

(Witness excused.)

Mr. Loble: Is Mr. Brinck here? Is Mr. Rich. here,—he was here  
this morning. Is Mr. Frank Wenzel here?

FRANK WENZEL, was sworn as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Frank J. Wenzel is your name? A. Yes, sir.

Q. And where do you live, Mr. Wenzel? A. I live in town.

Q. What business are you in? A. Farming.

Q. And where are your farm holdings? A. Two miles east and  
seven and one-half miles north.

Q. Approximately how much acreage do you operate? A. The  
boys and I operate approximately thirty-five hundred acres.

Q. "The boys" are your sons? A. Sons and son-in-law. Part of  
these holdings are at Pendroy. My son-in-law, he is at Pen-  
747 droy.

Q. Your son-in-law lives at Pendroy? A. Yes, sir.

Q. And all of you together operate approximately thirty-five  
hundred acres? A. Yes; that we own and lease.

Q. That is what I mean. And what would you say you take off  
in the way of number of bushels from this thirty-five hundred  
acres? A. Well, I never have really checked it, but in the neigh-  
borhood of thirty thousand bushels in some years, more or less.

Q. Thirty thousand bushels is a pretty fair average, is it? A. I  
think so.

Examiner Bernhard: Is this grain?

The Witness: All grain; yes.

Q. Where does most of your grain come to? A. Most of it comes  
to Valier.

Q. That is, the crop that is raised a little closer to Pendroy, that  
goes to Pendroy, does it? A. Yes; it does.

Q. You have two railroads there, do you? A. No; just one.  
Agawam is the other.

Q. The Great Northern is at Pendroy? A. Yes; the Great  
Northern.

Q. And Agawam is on the Milwaukee? A. Yes.

748 Q. They are close together? Will you tell the Examiner how close these two towns are? A. I have never been to Agawam, but I would say approximately seven or eight miles.

Q. They are competing railroads there? A. Yes; they are.

Q. You haven't heard of any abandonment proceedings there, have you? A. No, sir.

Q. You do business here in Valier with your grain, do you not? A. Yes, sir.

Q. You store it here? A. Yes, sir.

Q. And do you use the Montana Western Railroad? A. Yes, sir.

Q. And you have been here how long? A. Thirty-five years.

Q. And have you done that during all these years? A. Yes, sir.

Q. State whether or not you have built up your holdings and your business with the idea in mind that this transportation is here for you when you pay for it, like it is for all the others? A. I have.

749 Q. Is it important to your operations to have this railroad? A. Absolutely.

Q. Does public convenience and necessity require that this railroad remain here? A. I would think so.

Q. When you came here did you consider the railroad as being an important element in your coming here? A. Yes, sir.

Q. And you do business with different elevators, do you not, here? A. Yes, sir.

Q. At the present time do you have grain on hand? A. No.

Q. You have sold your grain? A. Outside of my winter wheat seed, I wasn't under the loan, what I had at home, and right after the New Year I hauled my holdings to town and sold them.

Q. So you aren't having quite as much trouble as some of them are? A. No; I am not.

Q. I think that is pretty smart, myself. How about the matter of getting cars? Is it easier to get cars at Pendroy, or here? A. It is.

750 Q. And why do you think it is easier? What is the occasion for it being easier at Pendroy? A. Well, I didn't used to really know. I thought it was just the Milwaukee, but since I have been here listening to this hearing, I have had some enlightening figures. Pendroy is operated identically as this Montana Western. They bring their,—they are on a side line, a branch line, just like this line. They come up with a gas-electric or a Diesel-electric, and when the load gets heavy they use steam, just like this railroad. The only difference that I can see is that their haul is more than three times as long as this one, the Montana Western, and their income,—they have to operate on the Conrad rate. Their income would be, according to these figures that were released here, would be two and one-half cents a hundred.

Q. Less on Pendroy? A. That is all they get from Pendroy for hauling it to the other road, because the rate at Conrad and Pendroy are the same.

Q. The Great Northern operates that branch line? A. The Great Northern operates that branch line.

Q. And the freight rate is less than it is here? A. The freight rate is the same as Conrad.

Q. The same as Conrad. As to the number of cars they have, I think you said it is easier to get cars at Pendroy than it is here? A. Yes, sir.

—Q. How many elevators are there in Pendroy? A. Three.

Q. You have some of your acreages under the ditch, do you not, under the water company? A. Yes; I have.

Q. So far as you are concerned, Mr. Wenzel, and the people of this community generally, this is a matter of great importance, is it not? A. I think so.

Q. You always regarded this railroad as an entire unit and a part of the whole project, didn't you? A. I did.

Q. And do you know how you could possibly handle your grain by truck, or anything of that kind? A. No; I don't.

Q. If Mr. Bernhard had the power tomorrow morning to say this road wouldn't be here, where would you take your grain, do you know? A. No; I don't.

Q. There isn't enough facilities in Conrad, Shelby, Cutbank or any of these places, are there? A. No. You take Conrad, they have a lighter soil, and they have more dry land east of Conrad, and

Conrad is generally full by the time we start to harvest here. So is Shelby; so is Pendroy. We are at the tail end of the harvest. They are full and you couldn't haul down there.

Q. You harvest a little later than those places, do you? A. We do.

Q. About how much later? A. Oh, I would say from a week to ten days, two weeks.

Q. So the other fellow has filled up the elevator before you get there? A. At Conrad?

Q. Yes. A. Yes; Conrad, and Shelby and Pendroy, they do.

Q. Take the roads around here, if you had to have the number of trucks that they are talking about to take the place of that many cars, seven hundred and fifty cars, do you think the roads around here would hold any such number of grain trucks? A. No; I do not.

Q. And to haul grain in small quantities, say, a few hundred bushels at a time, twenty or twenty-five miles, what would that do to you? A. Well, we generally,—I am like Mr. Peterson and most these farmers,—we generally try to get all we can while we are harvesting to the elevator, so that the balance, when the elevator is full, we will have granary room, maybe, to hold the rest of it.

753 Q. One of these grain cars holds about how much? Do you have any idea? A. Well, I think they run close to eighteen hundred bushels a car.

Q. And for you to,— A. (Interposing:) That is the average.

Q. About eighteen hundred bushels? A. Yes, sir.

Q. You don't know any kind of a motor vehicle that carries anything like that, do you? A. No, sir.

Q. And in carrying it by motor vehicle you have to take into consideration the load limits, do you not? A. Yes; we do.

Q. You have a difficult enough time now with road limits, in being careful not to be over-tonnaged? A. Well, we haven't had any load limits. We might with this new oil. Heretofore we just had dirt and gravel roads, and we had no load limits here.

Q. You came here in 1914,—where did you come from?

Examiner Bernhard: Mr. Loble, haven't you pretty well established,—

Mr. Loble: I think so.

Examiner Bernhard:—those things? Isn't this character  
754 of testimony largely cumulative?

Mr. Loble: Yes. I am about to stipulate,—ask for a stipulation,—never mind that last question. You may cross examine.

#### Cross Examination

Q. (By Mr. Jardine:) I think you said the freight rate at Pendroy was the same as the rate at Conrad? A. It is.

Q. Then if the Montana Western got the difference between the rate at Valier and the rate at Conrad, we wouldn't get anything for hauling the grain from Valier to Conrad, would we? I mean, if the rate at Valier was the same as the rate at Conrad, we would have no income whatever for hauling grain from Valier to Conrad? A. You would have two and a half cents, the way I gather it, according to your figures. The grain rate at Conrad where you haul it you get two and a half cents?

Q. Oh, you mean the proportion of the amount?—A. Yes. The grain rate, if they pick up your car, is fifty-eight cents.

Q. They get two and a half cents less in hauling it from Conrad if the grain originates at Valier,—that is what you mean? A. That is the way I understand it.

Mr. Loble: You mean the Great Northern gets two and a  
755 half cents less?

Mr. Jardine: Yes.

Q. (Mr. Jardine, continuing:) If it originates at Valier, than they get if it originates at Conrad? And you are correct in that. We would get two and a half cents for hauling it,—two and a half cents less? A. That is why I figure the Great Northern can figure itself



accordingly on this branch line, is the two and a half cents that they get when it,—that you get,—

Q. Of course, we get eight and a half cents plus four percent, and I suppose the Great Northern gets two and a half cents plus four per cent. There is an increase of four per cent in there that I suppose is likewise applicable there. We get eight and one-half cents plus the tariff increase of four per cent, which is 8.84 for hauling grain from here to Conrad.

Mr. Jardine: I think that is all.

Mr. Loble: Thank you.

Examiner Bernhard: Mr. Wenzel, are your sons, or your son-in-law, separately testifying in this proceeding?

The Witness: No; they are not.

Examiner Bernhard: That is all. Thank you. You may be excused.

(Witness excused.)

Mr. Loble: Is Lloyd Campbell here? Is Blaine Ferguson  
756 here?

BLAINE FERGUSON, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) State your name, please. A. Blaine Ferguson.

Q. And where do you live? A. In Valier.

Q. What is your occupation? A. Farmer.

Q. How much ground do you work? A. About two thousand acres.

Q. And do any members of your family work ground in conjunction with you, or is that the total amount? A. My son is working with me.

Q. On two thousand acres? A. That is right.

Q. And where is the two thousand acres located, generally? In what direction? A. It is north of Valier.

Q. And what do you raise on there? A. Wheat, mostly.

Q. And about how many bushels do you average? A. I have been getting between twenty-five, — about twenty-five thousand  
757 bushels.

Q. That would be twenty-five thousand bushels,— A. A year.

Q. A year. Grain? A. Grain; yes.

Q. This twenty-five thousand bushels, you store it here in the elevators in this community? A. I haul it into Valier and store it in my bins, as much of it as I can.

Q. And you ship out over the Montana Western? A. That is right.

Q. How long have you been here? A. I have been in Pondera County since 1922.

Q. And you have been in this business for how many years? A. Since 1939.

Q. Do you believe that public necessity and convenience requires the operation of this railroad? A. Absolutely.

Q. Do you corroborate those who have preceeded you in the matters having to do with the size, progress and development of this community? A. I do.

Q. And you are in accord with those views? A. That is right.

Mr. Loble: That is all.

Mr. Jardine: No cross examination.

758 Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: I will call Mr. Rich again,—he is not here. Mr. Brinck? Mr. Wenzel has been here. Is there any witness back there that I asked to be here that I haven't called? Just a moment. Is Mr. Tom Busey, or Mr. Herb Conrad, with whom I talked, either one of them here? Hugo Swanson? Yes; there he is.

HUGO SWANSON, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Will you give the Reporter your name, please, Mr. Swanson? A. Hugo Swanson.

Q. And, Mr. Swanson, where do you live, please? A. I live one mile east and three and three-quarter miles north of Valier.

Q. What business are you in? A. Farming.

Q. And about how much acreage do you operate, whether you own it or lease it? A. About six hundred acres.

Q. And do any members of your family operating farming, too?

A. Yes; all of my sons are around here, and they are all  
759 farming.

Q. How many have you? A. Three.

Q. And what acreage do they farm? A. Well, the son that works,—

Examiner Bernhard: Just give it in the total.

Mr. Loble: Yes. The total amount? A. I would say around a thousand acres, the three of them.

Q. They operate around a thousand acres? A. Yes, sir.

Q. How long have you lived here? A. Since 1914.

Q. And you have raised your family here? A. Yes.

Q. And these boys were raised here and went to school here, and now they are carrying on like you did, is that right? A. Yes.

Q. Engaged in farming? A. Yes.

Q. How much grain would you produce, approximately, in bushels from your land and theirs, together? A. Well, I would say fifteen to twenty thousand bushels,—something like that.

Q. Fifteen to twenty thousand bushels of grain? A. Yes, sir.

Q. You store that grain in elevators in Valier? A. We  
760 generally try to get everything we can in when we harvest, and then the rest of it we store out on the farm and haul it in later on as we can get room for it.

Q. Yes. Does everything you produce move out of this community over the Montana Western Railroad? A. Yes; that is the only way it can move out.

Q. That is right. And in your opinion is public necessity and convenience,—does it require that railroad stay here? A. Absolutely.

Q. If that railroad isn't here, why, a lot of you fellows are dead ducks, aren't you? A. Well, I will tell you, us older ones now we are about to the end of our farming, but I tell you for these younger ones just starting out it would really be a more serious problem than it would be for us.

Q. As you older fellows get older you farm less land, and your sons farm more? That is right? A. Yes; and they have their future ahead of them, and it would really be of more concern to them than for us older ones that is just about gone the time limit.

Q. It is a serious matter, is it not? A. Well, I certainly think so.

Q. And it would seriously affect all farming here, and it would affect the community of Valier, would it not? A. Well, it certainly would, in more ways than one.

761 Mr. Loble: You may examine.

#### Cross Examination

Q. (By Mr. Jardine:) Hugo, our future is mostly in the past, isn't it? —

Mr. Loble: Who do you include in that?

Mr. Jardine: Just a minute.

Mr. Loble: Pardon me. A. I hope we don't have some of the past.

Q. (Mr. Jardine, continuing:) The past hasn't been too good some times?

Mr. Loble: You both look all right to me. You get along all right.

A. Not under those conditions that some of us went through.

Mr. Jardine: I think that is all.

Mr. Loble: Thank you, very much.

Examiner Bernhard: You may be excused.

(Witness excused.)

Mr. Loble: Mr.,—Are any of the members of the Board of County Commissioners here? I have a resolution, if they are not. Is there

any other witness that I interrogated or talked to, that I haven't called? I have a few stipulations,—some have come and some have gone.

Mr. Jardine: Some have what.

Mr. Loble: Some who have been here,—may we go off the record a minute, Mr. Examiner?

762 Examiner Bernhard: Off the record, Mr. Reporter,

(Discussion off the record.)

Examiner Bernhard: Back on the record:

Mr. Loble: It is stipulated that the following named persons, if called as witnesses, all of them being residents of this community, most of them engaged in farming on various sized tracts, to-wit: Jim Sheble; Earl Crawford; Carl Killian; Pete Hiritsco; Stoltz Brothers; Neyehius Brothers,—that should be N-e-e-n-h-u-i-s Brothers; Robert Brophy; Parker Brothers; Ern Ball; John Goff; A. L. Rich; Archie Campbell, would testify that in their opinion public necessity and convenience requires the continuation of the Montana Western Railway, and its operation.

Examiner Bernhard: Are they mostly farmers and shippers of grain?

Mr. Loble: Yes; all of them, I believe. Livestock,—farmers, livestock,—most of them are farmers, some livestock. All of them are witnesses similarly engaged in the livestock business to those who have gone on the stand before. All of them have lived here an average length of time that the rest of them have. Most of them are neighbors of those who have gone on the stand and testified.

Mr. Jardine: We are willing to admit that subject to the provision that it is based on their opinion, and the assumption that no other form of transportation is, or would be available to transport  
763 the farming products which they raise at a similar cost.

Mr. Loble: That is right. That is right; we agree.

Examiner Bernhard: The stipulation is noted.

Mr. Loble: Now, Mr. Booth.

EDWIN S. BOOTH, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. Edwin S. Booth.

Q. And you are an attorney-at-law? A. I am. I am secretary-counsel of the Board of Railroad Commissioners of the State of Montana.

Q. And you are one of counsel here in this proceeding? A. I am.

Q. The records of the Board of Railroad Commissioners of the State of Montana are in your custody? A. They are.



Q. I have requested you to examine your records and to give us some comparative figures on branch lines in this vicinity. We have spoken of the Pendroy Branch, which is a branch of the Great Northern,—and Pendroy is approximately how far from here, if you know? A. I don't know the distance from here?

Q. About twenty-five miles, someone tells me. Would you  
764 say that is about right? A. It is all right with me.

Mr. Jardine: We will stipulate to that.

Mr. Loble: All right.

Q. Now, Augusta is about how far from here?

Mr. Jardine: Oh, I think Augusta is about,—it is quite a lot further?

Voice from Audience: Seventy to eighty miles.

Mr. Loble: About seventy-five miles?

Mr. Jardine: Would it be that far?

Mr. Loble: About seventy-five miles. And Agawam, Mr. Jardine says, is about thirty-three miles from here.

Q. (Mr. Loble, continuing:) The Agawam Branch is a branch of the Milwaukee, is it not? A. That is correct.

Q. And the Pendroy branch is a branch of the Great Northern, is it not? A. Correct.

Q. And the Augusta Branch is also a branch of the Great Northern, is it not? A. That is correct.

Q. All of these are branch roads going out into a farming area, and are probably, are they not, the closest branch roads to this one here? A. Yes; they are the three branch roads located somewhere in this vicinity.

765 Q. Are they located, generally, in the same type of country, that is, agricultural and livestock country? A. My answer on that can only be general, and the answer would be yes. It is agriculture and livestock. I am not prepared to compare the communities.

Q. As to the development of this community of Valier, by reason of irrigation, over some of those other communities, you are not prepared to answer, of course. Now, I just took the outgoing carloads,—that is what you have there, is it not? A. Yes; the report that you refer to is made up from the reports submitted by the railroad companies showing the carload shipments outbound from each station on the lines of the roads in question.

Q. I asked for the outbound so as to get the picture of what is shipped out of these various localities. Now, on the Pendroy branch, in the year 198, the number of cars shipped,—the total number of acres, carload shipments, were how many? A. 861.

Q. And they were made up from the following towns on that line: Pendroy, 281; Bymun, 109; Choteau, 268; Boyle, 88,— A. That should be Boyd,—B-o-y-d.

Q. Boyd?

Mr. Loble: I am told the name of the station is Bole, 766 B-o-l-e.

Examiner Bernhard: How many at Bole?

Mr. Loble: Bole, 88.

Q. (Mr. Loble, continuing:) And Cordova, 55. Those are places on that railroad line? A. That is correct.

Examiner Bernhard: Pendroy was how many?

Mr. Loble: Pendroy was 281.

Q. (Mr. Loble, continuing:) Now, out of this community, Valier, that same year were shipped how many carloads? A. 491.

Q. So that Valier has shipped more than any one of those towns, has it not? A. The total of the branch is 801, as against 491, for the Montana Western.

Q. For the whole line. A. The figure "491" is from the entire Montana Western, not from Valier alone.

Q. I see. The difference is 491 were shipped out over this road and 801 out over that road. Now, how long is this road, the Montana Western? A. Twenty miles, from Valier to Conrad.

Q. And how long is the Pendroy Branch? A. The Pendroy Branch is seventy-seven miles from Great Falls to Pendroy. However, the road joins the Great Falls-Shelby line at Powers, 767 and the distance from Powers to Pendroy is fifty-one miles.

Q. That would be against,—that would be a total of seventy-seven miles, would it, or more? A. A total of fifty-one miles for comparable purposes.

Q. In other words, the road that we speak about, it has a territory almost three times the length of this road, has it not? In general figures? A. That is correct. It is two hundred and fifty-five percent.

Q. Now take the other one, the next one, the August branch. The town of Augusta, 227 cars,—this is for 1948,—Simms, 226, Fort Shaw, 49, a total for that year of 502 carloads during the year 1948; is that correct? A. That is correct.

Examiner Bernhard: What railroad is that?

Mr. Loble: That is the Great Northern Railway from Augusta, Montana, to the main line at Great Falls.

The Witness: That is correct,—to the branch running between Great Falls and Shelby.

Examiner Bernhard: At what point does it join?

The Witness: At Vaughn.

Q. (Mr. Loble, continuing:) Now, that is five hundred and two cars outgoing as against 491 for the Montana Western, but again, as to the distance, what is the distance of the Augusta Branch compared to the twenty miles of this branch? A. Forty-two miles from Vaughn to Augusta, or two hundred and ten per cent greater.

Q. And taking in the other branch, it would be fifty-four miles, wouldn't it? A. The total branch from Great Falls to Augusta is fifty miles.

Q. And the total of this is twenty miles, is it not? A. That is right.

Q. Now, take the Milwaukee Railroad, the Agawam Branch, at Agawam in 1948 the carloadings outbound was 127?—Right? A. Right.

Q. Farmington, 78? A. Correct.

Q. Choteau, 134; Fairfield, 296; Ashelot, 57,—that makes a total of that branch of 692 outbound cars as against 491 of this branch, but, again, tell us the difference in distance between this branch road, the Montana Western, and the other. A. On the Agawam branch I don't have the exact figures, but as nearly as I can compute it from what I have with me, it is approximately seventy miles from Great Falls to Agawam. There are, however, certain trackage operating rights involved there with which I am not familiar.

Q. So as against the twenty miles this road runs, the Agawam runs seventy miles? A. That is correct.

769 Q. And have you, again, the percentage of that road over this? A. Three hundred and fifty per cent.

Q. Three hundred and fifty per cent greater? A. That is correct.

Q. Now this is obviously true, is it not, Mr. Booth: The more territory a railroad covers the more shipping it should produce; is that right? A. I don't know whether I can agree with that as a general proposition or not.

Q. Well, it is supposed to, isn't it? A. It is depending on the type of territory.

Q. Well, it is supposed to? A. Well, maybe it should.

Q. Well, so far as this branch is concerned,—so far as the Montana Western is concerned, what have you to say as comparative figures per carload per miles as to whether the Montana Western is greater than that of any of these others? A. From the figures given, the number of carloads outbound per mile of operation is greater on the Montana Western than any of the three branches referred to.

Q. Than any of the three branches? A. Yes.

Q. But the country,—well, I won't ask you. I forget you  
770 are in politics,—I may have to go to your superiors for that.

Mr. Loble: You may examine.

Examiner Bernhard: Mr. Loble, I would like to have a statement from you as to the purpose of this testimony, if you care to make one.

Mr. Loble: I certainly will. The purpose of this testimony is to illustrate this point: That here is a road much shorter, in the various percentages, than any of these three roads which are nearby, and that per carload shipped out there are more cars shipped out over this line here, the Montana Western, per mile that it runs than the other three,—any of the other three. It simply illustrates this point: That this is a good shipping center; it is rich territory; it is a rich transportation territory, and it compares more than favorably with any other branch line that exists in this vicinity. That is the purpose of it.

Mr. Jardine: We don't, and didn't feel that it was competent, relevant or material, on the ground the other railroad lines are branch lines, and this is not a branch line,—I mean not a subsidiary, or a part of a system, for instance, in this case the Great Northern System.

Examiner Bernhard: Do you want to cross examine the witness?

Mr. Jardine: No.

771 Examiner Bernhard: Then that is, all, Mr. Booth.

(Witnessed excused.)

Mr. Loble: Call Mr. Kingsbury, and this is our last witness:

WALLACE KINGSBURY, was sworn as a witness, and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) You may state your full name for the record, Mr. Kingsbury. A. Wallace Kingsbury.

Q. And, Mr. Kingsbury, you are a resident of this community, are you not? A. Yes, sir.

Q. Where do you reside? A. I reside fifteen miles west of the town of Valier.

Q. And in what business are you engaged? A. For a number of years past I was engaged almost exclusively in the livestock business, but in more recent, namely, the last two, I have devoted all of my attention to farming, with some livestock as a side line.

Q. How large a ranch do you operate? A. Seven thousand five hundred acres.

Q. You have been engaged in the ranching business all your life, have you not? A. Since 1920.



772 Q. And before living in this community, you lived where?

A. I lived on a ranch at Geraldine, Montana.

Q. And you are familiar with the agricultural and livestock business in Montana? A. Well, if twenty-nine years of operation would familiarize you with it, I would say yes.

Q. You have been president of the Montana Sheepmen, have you not? What is the official name of that? A. Montana Woolgrowers Association,—I acted as president, yes, sir.

Q. That is an organization made up of those persons engaged in the sheep business in the state of Montana, and it is a very active organization of livestock men, is it not? A. That is correct.

Q. You have been in the sheep business and the cattle business and the farming business, have you not? A. That is right.

Q. At the present time on your place you operate about how much land in farming,—exclusively grain farming, I am talking about?

A. Well, I have eleven hundred acres in crop, and possibly four to five hundred acres in summer fallow, at the present time.

Q. And that amount of acreage would produce approximately how many bushels; do you anticipate? A. Well, possibly  
773 fifteen to twenty thousand bushels.

Q. Where do you ship your grain from? Are you closer to Valier, or closer to any other point? A. I am nearer to Valier.

Q. Have you over the years used the Montana Western to a great extent? A. When it was more convenient to come here I would use it. There were times in the sheep business when my operations were on the Canadian border, and it was more convenient to load out of the town of Cutbank, but over the period I have been here, it is to be borne out by shipping records of the Montana Western, that I have been a shipper of livestock and other livestock products, including wool and lambs, and in the year just past I shipped ten carloads of hay.

Q. Shipped it over this line? A. Yes, sir.

Q. When you were in the sheep business a few years ago about how many sheep or lambs would you say you shipped out of here by railroad? A. Well, it varied by the years. I operated as many as fifty-six hundred head, and there were times I shipped upwards of eight or ten carloads.

Q. And your wool would go out of here as well? A. It did, on occasions.

Q. In the sheep business in the shipment of lambs, Mr.  
774 Kingsbury, it is entirely necessary to be done by rail, is it not? A. That is correct. It is almost impossible to ship lambs any great distance because of the tendency to crowd in trucks. You can bring them in a distance of fifteen or twenty miles to a rail head. It is more economical and more advantageous to do that than it is to try to trail them through some wheat farmer's field.

Q. Now, you are active in the Valier Community Club, are you not? A. I have taken a rather active part, I would say.

Q. And you consider this, as those who have gone on before you, is an important organization of this community? A. I would say, since the inception of such a club the community has advanced materially, not only in spirit, but in all civic undertakings.

Q. You are the chairman of the committee or group known as "Save the Tracks" committee? A. That is correct.

Q. State whether or not the expense of this committee, and the expenses involved in employing of counsel and all that has to do with this, has been done by popular subscription of this committee?

A. That is right.

775 Mr. Loble: Will you mark this placard, please, Mr. Reporter?

(The document above referred to was marked Protestant's Exhibit 23, Witness Kingsbury, for the purpose of identification.)

Q. (Mr. Loble, continuing) I show you what has been marked for identification as Protestant's Exhibit No. 23, and ask you whether or not that placard is the authentic placard of the "Save the Tracks" committee of the Valier Community Club? A. That is right.

Q. And you admit that it was put up every place in this county where you had room to put it up; is that right? A. Yes, sir.

Q. And this is a part of the fight that your committee is making? A. That is correct.

Mr. Loble: We offer that in evidence.

Examiner Bernhard: It may be received as Exhibit No. 23.

(Protestant's Exhibit 23, heretofore marked for identification, Witness Kingsbury, was received in evidence.)

Q. (Mr. Loble, continuing:) Now, in connection with that, your committee's activities, and you as chairman, your committee met many times and discussed this problem; is that right? A. Yes; we have.

Q. All these men that have gone before like Mr. Egan, Mr.  
776 Swanson, and a dozen others, whose names I could mention, have all worked hard with you, and the rest of the citizens here, some of whom have been witnesses, and many have been spectators, in this important matter; is that right? A. Yes; I would say we have had fully one hundred per cent cooperation of the community as a protesting body to the abandonment of this railroad.

Q. In that connection,—

Mr. Loble: Will you mark this please, Mr. Reporter?

(The document above mentioned was marked Applicant's Exhibit 24, Witness Kingsbury, for the purpose of identification.)

Q. (Mr. Loble, continuing:) There is a newspaper in Valier, is there not? A. Yes, sir.

Q. The Valerian, is that right? A. Yes, sir.

Q. And you have had the cooperation of this newspaper, have you not? A. We have had. We have paid for advertising, and have received general newsworthy publicity.

Q. Following the activities of this committee, state whether or not, without solicitation on your part, you received a letter from Mr. John H. McMillan, Jr., President of the Valier Company under date of June 2nd, 1949? A. I recognize the letter as having been received.

Q. That was not in response to any letter you wrote him, was it? A. No; I have had but one piece of correspondence with Mr. McMillan, and that was merely acknowledging receipt of this letter.

Q. This letter was in response to the wide-spread activities of the Save the Tracks Committee; is that right? A. That is right.

Mr. Loble: We offer the letter in evidence as Applicant's Exhibit No. 24.

Mr. Jardine: No objection.

Examiner Bernhard: It may be received in evidence as Exhibit No. 24.

(Protestant's Exhibit No. 24, Witness Kingsbury, heretofore marked for identification, was received in evidence.)

Mr. Loble: May I read the letter here, or not?

Examiner Bernhard: No, you don't need to read it.

Q. (Mr. Loble, continuing:) This is the letter of which we read a part the other day. You heard it read, did you not? A. I did, sir.

Mr. Loble: I would like to explain that in there he suggested that for the I. C. C. the alternatives, that either the Great Northern continue,—

Examiner Bernhard: It was read twice, already.

Mr. Loble: O. K.

Examiner Bernhard: And the document will speak for itself.

Mr. Loble: I was so glad he wrote it that I wanted to read it again.

Q. (Mr. Loble, continuing:) Mr. Kingsbury, in addition to the witnesses we have had, the County Commissioners filed a protest, and they have been here from time to time, have they not? A. They have.

Q. I hand you a certified copy of a resolution by the Board of County Commissioners of Pondera County, taken from their min-



utes of June 6th, 7th and 8th, 1949, and I will ask you if you recognize that as a certified copy? A. I do, sir.

Mr. Loble: This is in lieu of,—will you mark this, please, Mr. Reporter. I think it is Exhibit No. 25.

(The document above referred to was marked Protestant's Exhibit 25, Witness Kingsbury, for the purposes of identification.)

Mr. Loble: We offer in evidence the resolution of the Board of County Commissioners of Pondera County in opposition to the abandonment of this railroad.

Examiner Bernhard: Is there any objections?

779 Mr. Jardine: We have no objection.

Examiner Bernhard: It may be received as Exhibit No. 25.

(Protestant's Exhibit No. 25, Witness Kingsbury, heretofore marked for identification, was received in evidence.)

Mr. Loble: And will you mark this as Exhibit No. 26, Mr. Reporter?

(The document above referred to was marked Protestant's Exhibit No. 26, Witness Kingsbury, for the purposes of identification.)

Q. (Mr. Loble, continuing:) I show you a resolution of protest by the Conrad Lions Club, Sig. O. Hefty, as president, and as chairman of the Save the Tracks Committee, I will ask you if that was forwarded to you for presentation? A. That is correct.

Mr. Loble: I offer that in evidence, and I will supply a copy. I don't seem to have a copy of it.

Mr. Jardine: No objection.

Examiner Bernhard: The exhibit marked No. 26 is received in evidence.

(Protestant's Exhibit No. 26, Witness Kingsbury, heretofore marked for identification, was received in evidence.)

Examiner Bernhard: If you will supply me with a copy of No. 26?

Mr. Loble: We will,—supply him a copy, or you?

780 Examiner Bernhard: I want one.

Mr. Loble: I will have to have one made up.

Mr. Booth: Here is a copy.

Examiner Bernhard: Thank you, Mr. Booth.

Q. (Mr. Loble, continuing:) Now, Mr. Kingsbury, will you refer to your files that you have accumulated during your activities as Chairman, and we turn now to the first, which is the R. E. A.,—I want to show something about the development of this community.



Examiner Bernhard: Suppose we take a recess at this time?

Mr. Loble: O. K.

Examiner Bernhard: Ten minutes.

(A short recess was taken.)

Examiner Bernhard: The hearing will be resumed.

Q. (Mr. Loble, continuing:) Now, Mr. Kingsbury, to more definitely show, as chairman of the Save the Tracks Committee, the fact that this is a progressive community, you were asked by the Committee, and at your own volition, to gather certain data which is in addition to the data offered here, of a statistical nature, and will you now refer to that, and I ask you to particularly refer to the file in reference to the Montana Power, as to the number of customers, and the R. E. A.,—the R. E. A. is rural electrification, is it not? A. Yes, sir. I have a tabulation attached to correspondence from Mr. Dick C. Chevalier, Division Superintendent of 781 the Montana Power Company with offices in Butte, Montana, under date of May 27th, 1949, in which, commencing with the year 1939, tabulates the town of Valier with two hundred and ten customers using Montana Power, and that the dollar revenue to the Power Company in that year amounted to \$16,193.00.

Examiner Bernhard: Do you have copies so you can submit it in evidence?

The Witness: I am sorry, I do not. I shall be glad to submit the original.

Examiner Bernhard: It seems to be rather short. You may continue reading it in the record.

The Witness: I hadn't intended, Mr. Examiner, to read the various years, but I simply wanted to read the first year and the last year.

Examiner Bernhard: Very well. A. (Continuing:) In the year 1948 there were three hundred and fifty-four customers, who paid into the Power Company for the kilowatts used, \$27,210.00. There was, therefore, an increase of 68.57 per cent in users, and an increase of 68.035 per cent increase in dollar volume.

Q. (Mr. Loble, continuing:) So that in the ten year period from 1939,—or really a nine year period,—from 1939 to 1948, the users of electricity in Valier increased 68.57 per cent?

782 Examiner Bernhard: You said 1938, you mean 1948?

Mr. Loble: From 1939 to 1948, inclusive? A. That is right, inclusive; yes.

Q. And the dollar volume increased 68.035 per cent? A. That is right.

Q. And now as a man familiar with public affairs and a business man, state whether or not we find that increased use of power in a

community is indicative of the fact that that community is growing and expanding? A. Yes; I would say so.

Q. Now, as to rural electrification, if you will take your figures,—and rural electrification is an important matter in this state, is it not? A. It is, definitely.

Q. Give us some comparative figures to show as to this area. A. The Sun River Electric Cooperative, whose manager is Mr. A. A. Wells of Fairfield, Montana, submits under date of June 29th, 1949, a figure for the year 1942 showing that were 41,945 kilowatt hours consumed in the Valley area, for which was paid in \$2,390.89; and in the year 1948, the users in this area consumed 169,063 kilowatt hours, for which payment was made in the sum of \$5,862.17, showing that the farms in this area have become electrified through the use of the Rural Electrification Association.

783 Q. And as a farmer state whether or not rural electrification advances and develops only in communities that are good agricultural areas and show progress? A. Well, the cost of rural electrification in many instances exceeds the cost of private power to the extent that there is a construction charge for the line. Therefore, people are not going to use it unless they are progressive, and unless the area is developing, and unless it is a prosperous community. In this particular area prosperity is definitely demonstrated in these figures, and I might state further that there is hardly a farm that doesn't enjoy rural electrification, and have a shop in which it can do its own repair of farming equipment. That could not be done had it not been for R. E. A., or the Montana Power Company supplying the necessary electricity.

Q. The jump from 1942 to 1948, a six year period, is really a phenomenal one, is it not, in the use of kilowatt hours? A. It is quite sizeable.

Q. Now, Mr. Kingsbury, so that the record may show the use of power on a farm or ranch, it is not limited to electric lights or things of that kind, is it? A. Indeed not.

Q. The principal purpose of power is for the things you described; the repair of machinery, and to enable tractors to operate, and things of that kind, is it not? A. The pumping of water,  
784 and the grinding of feed, and various and sundry uses.

Q. Does the use of power reflect itself in the production of a farm? A. I would definitely say that it did, because there is not only a necessity for it in the ways I have already stated, but most of these gentlemen who are in this business of farming, require the use of electric welding equipment for the repair and upkeep of their machinery, thus not requiring them to go into town for every bit of repair that is occasioned.

Q. Those things all reflect in the net profit to the farmers, do they not? A. Definitely.

Q. Now then, turn, if you will,— A. May I interrupt? Would you like me to submit these two letters? So far as we are concerned we do not need them in our file.

Examiner Bernhard: You have given the substance of them, I take it?

Mr. Loble: Yes.

Q. (Mr. Loble, continuing:) On the,—now referring to the assessed valuation here from 1928 to 1948 of the Montana Western Railroad, do you have that before you? A. I have, sir.

Q. And that is what?

Examiner Bernhard: Are you going to give it by years?

785 The Witness: I shall not do it all the way through, Mr.

Examiner.

Examiner Bernhard: Do you have some copies?

The Witness: I have an additional copy here; yes, sir.

Mr. Loble: Then we will have it marked, and submit the copies. Will you mark this Mr. Reporter as Protestant's Exhibit No. 27? A. Let's see if this is exactly the same,—yes, with the exception of this estimate, which isn't necessary.

Examiner Bernhard: You can strike that off. You had better fix them both alike.

The Witness: I hate to take up the time at this moment. Can't I do that afterwards and just the,—just submit the one that is correct?

Examiner Bernhard: All right.

Mr. Jardine: I wonder if we could look at it a second?

The Witness: Yes; you may look at it.

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record:

Q. (Mr. Loble, continuing:) Can you tell us what the assessed valuation was in 1928 of the Montana Western Railway Company?

A. The assessed valuation in that year totalled \$180,905.00.

Q. And what is it in 1948? A. In 1948 it totalled \$112,-  
786 200.00.

Mr. Jardine: Well, Wallace, those figures don't quite agree with the figures here.

Examiner Bernhard: Maybe that is all you want to submit?

The Witness: We will throw those away. They are supposed to have been copies. This, however, has the assessor's figures to it,—it would probably be more authentic.



Examiner Bernhard: But you only have the one copy?

The Witness: Yes; just the one copy.

Examiner Bernhard: Then read the figures. You don't want them for every year, do you?

The Witness: No; I don't think it should be necessary.

Q. (Mr. Loble, continuing:) It starts with what year? A. It starts with the year 1928 and concludes with the year 1949.

Q. All right. Now, give us those figures. A. The figure in 1928 was \$180,905.00, and in 1949, it had depreciated to a point of \$117,100.00.

Q. Have you been able to find where this company has ever asked for a reduction in its assessed valuation? A. There has never been any record in the office of the county assessor where officers of the Montana Western Railway Company have ever asked for a reduction of their assessments, or have entered a protest on the payment of any tax due.

Q. Now, will you refer to your Valier population,—or assessed valuation? What was the assessed valuation in Valier in 1939, if you have that? A. It amounted to a figure of \$569,090.00.

Q. That was 1939. Now give us 1948. A. The assessed valuation of the real, personal and the motor property in the city of Valier is now \$1,002,239.00.

Q. That is as of 1948? A. Yes, sir.

Q. Now, will you revert to your statistics on natural gas? Give us the figures on the use of natural gas in Valier at certain extremities of years. Give us the year first, commencing with the year 1943. A. Commencing with the year 1943 there were one hundred and fifty-five gas meters in this city, and a total gas consumption of 30,537,300 cubic feet.

Q. Now, give us the year that you desire to compare that with. A. The year 1948 shows two hundred and twenty meters, with cubic foot consumption 49,079,000, and I might state that in the year 1949 there were five additional meters, and for the period including April 30th of this year the consumption totaled 29,407,000 feet, or a little over a million feet less than was consumed in the year 1943.

Q. 1943? A. Yes.

Q. In 1949 was there a greater consumption than for the preceeding year? A. 1949?

Q. Yes. A. For the four months it shows within one million feet,—slightly over a million,—there is a difference of a little over a million feet between the consumption for four months of 1949 and what was consumed in the entire year of 1943.



Q. Thus we see, Mr. Kingsbury, that there has been a phenomenal expansion in the use of natural gas in this community, has there not? A. Yes, sir.

Q. And what does that spell to you as a business man? A. Well, I would say that it certainly spells progress and advancement and desirability on the part of the citizens of this town to enjoy all the conveniences that anyone else is entitled to. On top of that there is contemplated extension of the lines totaling 3,350 feet at a cost of \$2,800.00.

Q. Extend the lines to other houses? A. That is right.

Q. Here in this community I have observed in going around the buildings and the homes, they are attractive and well kept, are they not? A. Yes, sir.

Q. Is there any available rental property here that is vacant?

A. No; indeed, there is not. It is a problem for anyone to  
789 find residential,—

Q. Is it true that not only are all the homes here rented so there is no place to rent a home, but in addition to that many types of structures have been moved in from the country where they would serve less use and reconstructed here as homes? A. That is certainly the case.

Q. Now, we turn to the Valier public schools. A. Yes, sir.

Q. All right. Now tell us about the public schools, how they are doing about population around here,—I mean the public schools.

A. Yes, sir. In 1937 and 1938, being a school year, there were two hundred and twenty-one elementary pupils and ninety high school pupils, totaling 311; and in the school year just past 1948-1949, two hundred and thirty-four children attended elementary schools, ninety-seven attended high school, or a total of three hundred and thirty-one.

Q. The increase in attendance in the schools would indicate an increase in population, would it not? A. That is correct.

Q. This building we are in now is a part of the school district, is it not? A. Very definitely.

Q. There is listed in the Questionnaire,—return to Ques-  
790 tionnaire, many business institutions that are here. Those are here, are they not, and more, too? A. Yes; I have a compiled list here in my possession showing a very material increase in the number of businesses that are in this community today as against what was here ten years ago. The list includes something like thirty-three, either new businesses, or businesses that have constructed new buildings in which to carry on their business. That has taken place in the past ten years.

Q. And your population of Valier has done what in the past years? Give us the comparative years and the comparative figures.

A. According to the Department of Commerce, the year 1920 showed that we had six hundred and thirteen people in this community, and in 1940, the same source reports six hundred and forty-one, and a tabulation by the Community Club early spring showed that there were seven hundred and sixty-one people residing in this community.

Examiner Bernhard: What are the boundaries of the community?

Q. (Mr. Loble, continuing:) Yes; will you tell the Examiner?

A. I meant by the community the unincorporated limits of the town of Valier, that is, just the city itself here, and not the community.

Examiner Bernhard: How can you tell where to stop?

791 The Witness: Well, I would hardly be able to tell you that without referring to a map, because the interests that set up this town expected a city of something like ten thousand people.

Examiner Bernhard: Just give me approximately the radius covered by what you consider is the town of Valier?

The Witness: The town of Valier possibly extends to the east to where the Montana Western Railroad crosses the highway running to Highway No. 91, and to the west we will stop before we get to the cemetery, because those people have left us for keeps.

Mr. Jardine: You are not like Butte?

The Witness: No. The lake on the other side I think is a very definite boundary, Mr. Examiner.

Examiner Bernhard: You don't cross the lake?

The Witness: No, sir; we stay on this side of the lake entirely.

Q. (Mr. Loble, continuing:) In other words, your boundary lines are legitimate confines of the city's dwellings, are they not? A. That is correct.

Q. Not farm area? A. That is correct.

Q. Now then, having that in mind, the population of the town, the town itself, is supported by the rural area, is it not? A. 792 It is.

Q. Now then, on shipments of grain,—I do not know whether we covered those figures or not, but it has been explained that any figures on revenue from the shipping of grain in 1948 is not a true picture because grain has not been shipped; is that right?

Examiner Bernhard: I think that was fully explained, Mr. Loble.

Mr. Loble: I think so.

Q. (Mr. Loble, continuing:) You can give us the unshipped grain as of March 1st in bushels, if you would like to very quickly, in about three figures? A. Yes; this won't take but a very short time. According to the figures compiled by the farmers and the

Stockman's Bank, which in most cases processed the Commodity Credit Corporation's paper for these loans on the farm stored grain, it showed that there were 7,752 tons of barley; and there were 13,332 tons of wheat under farm storage.

Q. Add it down in bushels. A. Well,—

Q. (Interposing:) You have 323 thousand bushels of barley? A. 323,000 bushels? That is correct.

Q. And 186,000 bushels of wheat? A. Yes; 186,000 bushels.

Q. Besides flax and mustard that we do not have the figures on? A. Yes. Both flax and mustard are likewise stored on the farms.

Q. So that the production last year was in accord with the usual type of production, was it not? A. Yes, sir.

Q. And the production this year, since it started to rain particularly, will be substantially the same as it was last year, will it not? A. That is right.

Q. Some one testified before that you don't have crop failures here. Do you? A. Well, I think the nearest we ever came was in the year 1919 when practically all of the other fellows in the State of Montana were unable to even so much as get the return of their seed, and in that year the farmers here had what they considered a very fair crop.

Q. 1919 was a tough year from winter standpoint, too, was it not? A. It was very bad.

Q. On livestock, agriculture, and all? A. Yes. Now, to change these figures somewhat, it would be reflected that the cars ordered by farmers who have this stored grain up to June 28th, 1949, totaled two hundred and nineteen earloads, and during that same period the railroad was able to furnish the growers in this community but forty-nine cars.

Mr. Jardine: What is that period? From April 30th to June 15th? A. No; I can't say as to when it began,—yes; I can. These cars were ordered during the month of June for shipment over the Montana Western Railroad, and that amounted to two hundred and nineteen earloads up to and including June 28th.

Examiner Bernhard: And how many did you say were furnished?

The Witness: Forty-nine cars were furnished during that same period, leaving one hundred and seventy earloads which if this railroad got it would probably put it in the black.

Q. (Mr. Loble, continuing:) The revenue from that many cars would be substantial, would it not? A. It definitely would.

Q. And to get that revenue all it needs to do is to produce these cars at these elevators; is that right? A. Yes; if it could get the cars in here they would have no trouble getting the grain, because

it didn't get the orders without the grain being on the farms to be delivered.

Q. It is there ready to go, isn't it? A. That is right.

Q. Now, I don't know whether,—

Mr. Loble: I think the tons of freight shipped has been covered, has it not, Mr. Examiner, in a previous question?

795 Examiner Bernhard: Yes.

Mr. Loble: I didn't see the years 1938, 1939 and 1940. Maybe it was supplied later, but if it isn't, may I have the tonnage for those years? It wasn't in the Questionnaire.

Examiner Bernhard: You can put it in now.

Mr. Loble: May I put it in?

Examiner Bernhard: Yes.

Q. (Mr. Loble, continuing:) Put it in, Mr. Kingsbury, if you have it. A. The year 1938, products of agriculture,—

Q. Just give the total tons. A. This is tons, of two thousand pounds, 43,144; miscellaneous and less than carload lots,—

Q. Pardon me. Let's get the whole tonnage for the year. A. The total tons, regardless of the products?

Q. Regardless of the products; yes. A. All right. I will be very happy to do it that way.

Q. If you have it. A. In 1938, 47,418 tons.

Q. All right. A. In 1939, 34,802 tons. In 1940, 40,567 tons.

Q. What year did you have there last? A. 1940.

Q. All right. A. Was there some more you wished?

796 Q. I don't think 1941, 1942, 1943, 1944 and 1945 was in the Questionnaire, unless they supplied it afterwards. A. They skipped,—they skipped some good ones, too.

Mr. Jardine: I think it is all in Exhibit No. 11.

Mr. Loble: Maybe it is now. Is it all in there?

Mr. Jardine: Yes; it is all in Exhibit 11.

Mr. Loble: If it is all in there we don't need to put it in.

Mr. Jardine: The whole thing is in there.

Mr. Loble: If it is all in there we don't need to put it in.

Examiner Bernhard: I think we should strike out what he just gave.

Mr. Loble: All right; if it is in Exhibit 11, that is satisfactory. It wasn't on the Questionnaire. Thank you.

Q. (Mr. Loble, continuing:) Now, Mr. Kingsbury, what is your view as to whether or not,—I have covered your file, have I not?

A. I think so. The Utah-Idaho people put in their own report. The Greeley elevator people, you have heard their story.

Q. Yes; all right. A. And I think it has been pretty definitely established,—I have figures here to substantiate it from several of the grain houses, that the total bushelage in this area amounts to



something like eight hundred thousand to a million bushels.

797 Q. Per year? A. Per year; yes.

Q. Now one other question: State whether or not, in your opinion, public necessity and convenience requires the continuation of this road. A. Well, I would definitely say that it did. I know what it was as a boy to live thirty miles from a rail head where we had to haul with horses. Today you could no more consider doing that than you could jump off the Empire State building in New York City and expect to land safely. There is also a limitation as to the number of miles you can haul agricultural products, whether you have a dirt road or an oiled highway. More than that, there is a limitation on the tons per square inch of tire that will be permitted to drive over our highways. There is a limitation as to the feasibility of hauling this wool, and the opportunity once it is delivered at a rail head to dispose of it, and certainly any farmer who is combining his grain, and is just about as busy as a bird dog, would have no time to sit over there and wait for an elevator to find him space for his crop. He must either make arrangements in the beginning and have the promise that that elevator will accept his grain when it is delivered, or he doesn't dare take off for that elevator, and with the elevators in this community, which are already taxed beyond their capacity to handle these crops, 798 especially during the harvest season, and during the big rush of shipping, at whatever season of the year that might be, certainly, if this grain had to move out of Curbank, Pendroy, Shelby, or other places, those elevators are already taxed beyond their capacity, and certainly would be in no position to handle the crops from this territory.

Q. You corroborate and desire to be recorded as testifying in the same manner as those who have preceeded you as to the necessity of this road, the progress of this community, that this road is an integral part of the entire Valier country? A. With very definite additional emphasis thereon.

Q. And from having traveled about and taken your time and devoted your energies to this, do you find that this community is one hundred per cent opposed to the abandonment of this railroad? A. I think everybody feels that we will wind up as something short of a fishing camp if it left here.

Q. And do you feel determined effort should be made to effect operating economies in this road, if necessary to provide for limitation of service, if necessary to eliminate passenger service and confine it to freight service, or whatever may be determined by those having the knowledge in order to pass upon it, in order that this road might continue? A. My answer is yes.

Q. And did you and your committee learn for the first time when Mr. Young, counsel for the company, testified here what the reason,—the real reason was for discontinuing this road, —for this abandonment, or proposed abandonment? A.

That's quite right. I am certain,—and I am speaking for myself,—and I think I can likewise state for the other members of this committee, that those were some of the pertinent facts that we wanted to uncover, but we never realized that they were going to come out in the fashion in which they did.

Q. Were you and your committee aware of the fact until it was so stated here by Mr. Young, that the discontinuance of the road was not by the refusal of the Great Northern, but brought about by the refusal of the Montana Western to renew its mortgage? A. That was the first we knew that that had happened.

Q. State whether or not you had assumed up to the time of this hearing that the Great Northern had simply said that they wouldn't advance any more money, or something, to that effect? A. That is right.

Q. Now, having heard Mr. Young on the stand, state whether or not you and your committee feel more keenly than ever the justice of your position that this community should not be subjected to this kind of treatment on any such grounds as advanced by Mr. Young, or the applicants? Do you feel that way about it? A. I do.

Mr. Loble: You may cross examine.

800 Q. (Mr. Loble, continuing:) Mr. Kingsbury: is there anything, whether I have asked you about it, or not, that I may have omitted here that you would like to amplify? A. In sitting here during the past three days, I have had occasion to maul a good many things over in my mind. I have had occasion to take down a few notes, and I should like very much before I am dismissed as a witness to bring out a few of the facts that I believe are somewhat pertinent to this matter. With the permission of the Examiner I would like to refer back to the Questionnaire, page four, line nine. It is there stated that the Montana Western was constructed for the purpose of transporting construction materials, labor and settlers to the project. There was never any mention made that they ever anticipated or expected to haul out of this community one carload of freight. It was all inbound. The train ran for years with everything coming in and nothing going out, and this must have been an era of prosperity for this little railroad. Now the reverse is true, and everything is going out and nothing coming in, which spells a loss and results in these proceedings for abandonment. We are still a highly productive area and where we have advanced through a change of normal shipping conditions so that the incom-

ing freight is inconsequential, and the outgoing freight is on the increase.

Examiner Bernhard: Mr. Kingsbury, may I interrupt?

801

The Witness: Yes, Mr. Examiner.

Examiner Bernhard: Which sentence there are you referring to?

The Witness: "The Montana Western Railway Company's line was constructed."

Examiner Bernhard: Won't you read the next sentence following that?

The Witness: "Since the time when the construction of the irrigation system was completed the line has been used principally for transporting materials and supplies to the settlers, and carrying agricultural produce from the project to market." That is correct, and I,—

Examiner Bernhard: Had you overlooked that next sentence?

The Witness: I should have realized that it was there, but I didn't include it in this tabulation. I beg the pardon of the Examiner.

Examiner Bernhard: You may proceed. A. (Continuing:) There is another matter in which counsel for the applicant has particularly stressed the poor roadbed of this company's railroad, and insisted that heavier loads or equipment could not be hauled or used on said rails and roadbed. We citizens have a highway for which our private and individual funds, and through taxation, were used to construct the same. This highway, from the standpoint of excessive loads, is in no different position than the so-called delapidated roadway of the petitioning railroad. We citizens are just as zealous of this highway as Mr. Jardine is of his Montana Western Railway Company's roadbed, and we do not want excessive loads carried over the same for the reason it would destroy our highway, which we have waited to enjoy for some twenty-six years. It would seem to me that considerable difference exists in Mr. Jardine's mind when it comes to the question of whether the,—of whether it is the citizens' or corporate property, which is being worn out. To inject just a little particle of humor in what has been a rather sad day, so many cold hard facts, it is rather paradoxical at this particular moment when the hearing is nearing its conclusion for the abandonment of the C. & B. M. Railroad, that the gas-electric power unit, No. 31, of this line, broke down at Williams, as if it had concluded to stop running even before the decision of the Interstate Commerce Commission. Now,—

Mr. Jardine: Just a minute, Mr. Kingsbury. I suppose you think I had something to do with that? A. Mr. Jardine, I will excuse you from that responsibility, but for the benefit of Mr. Examiner,

I would like to state, parenthetically, in referring to the C. & B. M. Railroad, that I mean Conrad & Back, Maybe.

Examiner Bernhard: Do I have to ride over that railroad?

803 The Witness: No.

Mr. Jardine: We submit that we have got a speeder that we will take you down to Conrad on, so you will see the roadbed, and how it compares with the highway east of here, and whether or not I was over/exaggerating in describing the condition of the road. I had nothing to do with the building of the roadbed, but I do know something about what it is.

The Witness: You should promise not to take any Flying Dutchman curves.

Q. (Mr. Loble, continuing:) Mr. Kingsbury, you heard the statement here of the program for rehabilitation of this road, an eight-year program, for the first time during this hearing; is that right?

A. Yes, sir.

Q. You didn't know it had been discussed or contemplated? A. That is correct.

Q. Nor you didn't know that the Great Northern put about seventeen thousand dollars into it while the matter was being discussed, did you? A. No, sir; that was highly enlightening.

Q. Yes. You heard Mr. Wentworth, the engineer, today, did you not? A. I did.

Q. You heard Mr. Booth, did you not? A. I did.

805 Q. Comparing these roads? A. Yes.

Q. From a freight standpoint, with the rehabilitation of the road that has been allowed to get into the condition it has, with a Diesel, is there any reason that you know of why this road with proper economy and the amount of freight that is available, cannot be run profitably, or at a reasonable profit? A. Well, I hate to get myself way out on a limb. I couldn't answer that question. I think, perhaps, it could be done by some manner of means, because, as I understand it, aside from the interest payments, the actual loss in operations is something between two and three thousand dollars a year, average.

Q. We will have those figures in a moment,—that is the average loss of operating revenue. Have you finished, Mr. Kingsbury? A. Yes.

Mr. Loble: You may cross examine.

Mr. Jardine: No cross examination.

Q. (Mr. Loble, continuing:) Do you have anything further, Mr. Kingsbury? A. I have nothing further.

Mr. Loble: Thank you very much, and thank you for your cooperation throughout this hearing.

(Witness excused.)



805 Mr. Loble: Now, just let me call Mr. Palin and Mr. Atwood to clear up two points, and I am through.

W. F. PALIN, was recalled as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:.) Your name? A. W. F. Palin.

Q. You are the same Mr. Palin who was heretofore on the stand?

A. Yes, sir.

Q. And when you were last on the stand we were discussing the matter of the eighteen thousand dollar average deficiency that had been testified to that was made up by the Great Northern; were we not discussing that? A. We were discussing the total deficit, I believe, for the year, weren't we.

Q. Yes; and following our discussion, either you or Mr. Atwood have been compiling new data at our request, or, rather, at the request of the Examiner, have you not,—or is it Mr. Atwood? A. It is Mr. Atwood.

Q. O. K. It was called to my attention today by Mr. Casey of the Montana Railroad Commission that when I asked you or Mr. Atwood if this railroad was for sale for a dollar, I thought you were  
806 just kidding. As a matter of fact, Mr. Casey told me that an advertisement has appeared in the newspaper in Helena not too long ago advertising this railroad for sale for a dollar; is that right? A. I didn't see any advertisement in the Helena paper.

Mr. Jardine: That was true. Here is the paper. I don't think Mr. Palin saw that, but it was also in the Valier paper, and in the Conrad, and I think he did see those.

Mr. Loble: Is this the Conrad paper?

Mr. Jardine: That is the Helena paper.

Q. (Mr. Loble, continuing:) It says, "For sale. Entire Capital Stock of the Montana Western Railway Company,—

Mr. Loble: I am reading it into the record, and it is from the Helena Independent,—or the Montana Record-Herald, of June 17th, 1949,—

Examiner Bernhard: What newspaper?

Mr. Loble: The Independent Record-Herald of Helena, Montana, dated June 17th, 1949. That is right, isn't it?

Mr. Jardine: Yes.

Mr. Loble: In there it says: "For Sale. Entire Capital Stock of the Montana Western Railroad Company. In order that no possibility of the continuing of the operation of the Montana Western Railroad Company shall be overlooked, the Valier Company hereby offers for sale to any person, or persons, who wish to undertake that task, and who can demonstrate reasonable financial ability to do  
807 so, all the stock of said Railway. Price One Dollar. The Valier Company, Valier, Montana."

Q. (Mr. Loble, continuing:) What was the purpose of that ad., do you know? A. I had nothing to do with that ad., in the composition of it, or the advertising,—or the publishing of it.

Q. Do you know who did? A. That—probably Mr. Young can explain that.

Q. I thought so. Now, who do you mean there by,—or do you know what is meant by “Anyone who can show reasonable financial ability,” or whatever it is. Do you know what that means? A. I do not. I do not know to just what extent they,—how much,—as to what their financial ability shall consist of,—just to what extent, I do not know.

Q. Does that offer, if you know as an officer of this company, include—is that subject to the outstanding indebtedness of the Great Northern? A. I do not know.

Q. You didn't know about the ad. until I just mentioned it? A. I read it in the paper.

Q. You are an officer of The Valier Company? A. I received a letter from Minneapolis saying they were going to have that,—that they thought about it, not that they were, but that they were thinking about it.

808 Q. O. K. Thank you.

Mr. Loble: That is all.

Mr. Jardine: No questions.

(Witness excused.)

Mr. Loble: Call Mr. Atwood.

C. E. ATWOOD, was recalled as a witness, and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Mr. Atwood, I think at one point in this proceedings we got into a little argument,—at more than one point,—about the yearly average deficit of this road, and at the direction of the Examiner you went back to your books and compiled some figures; is that right? A. Yes; I did.

Q. Now take that up, will you, and tell us how you arrived,—the figures you are about to give us, what they illustrate, if you will? You have the exhibits? A. Yes.

Mr. Loble: May I have them marked?

(The document above referred to was marked Protestant's Exhibit 27, Witness Atwood, for the purposes of identification.)

Examiner Bernhard: This exhibit which is headed “Montana Western Railway Company—Statement of Profit and Loss on Net Revenues from Railway Operations, before Taxes and before Interest, for the Years 1933 to 1948, inclusive,” is being marked for identification as Exhibit No. 27.

Q. (Mr. Loble, continuing:) This Exhibit No. 27, so marked for identification, you prepared, did you not, Mr. Atwood? A. I did.

Q. And you are the same Mr. Atwood who was heretofore on the stand and described yourself with certain titles having to do with this company? A. Yes.

Q. And this was prepared from your books and records was it not? A. Yes, sir.

Q. And it is correct, so far as you are humanly possible to make it correct; is that right? A. Yes, sir.

Mr. Loble: We now offer Exhibit No. 27 in evidence.

Mr. Jardine: No objection.

Examiner Bernhard: It is received as Exhibit No. 27.

(Protestant's Exhibit No. 27, Witness Atwood, heretofore marked for identification, was received in evidence.)

Q. (Mr. Loble, continuing:) Now, Mr. Atwood, so as to pick up where we left off before coming to this, at the time Mr. Ansell of the Utah-Idaho Sugar Company was on the stand, we were all referring to Exhibit No. 11, page three, and in that exhibit,—if you have it there? A. I have it.

810 Q. You have got it there? A. Yes.

Q. In that exhibit,—and I am using round figures,—it was said there was an annual average deficit of eighteen thousand dollars between 1933 and 1948? A. That is right?

Q. The actual figures is what, eighteen thousand and what? A. \$18,672.10.

Q. I am going to drop the \$672.00 and call it eighteen thousand for the moment. Now, we were trying from that exhibit, which was your exhibit, we were trying to figure out at that time,—determine how much in added revenue would be required to make that up; in other words, if you would get from the Great Northern, or any source, the Montana Western would get certain additional revenue to make that up, how much it would be. We discussed that, did we not? A. Yes.

Q. And we took from those figures of yours in that exhibit the figure of two and nine-tenths cents? Is that right? A. Yes.

Q. So that if during that period of time for which the deficit of \$18,000.00 is mentioned this railroad, The Montana Western, had had two and nine-tenths cents more in revenue per hundred weight, the deficit would not have occurred? A. That is right.

811 Q. So that at that time in that discussion we found, did we not, by the Great Northern giving,—paying the deficit of your company it was, in effect, giving you two and nine-tenths cents per hundred weight of its revenue; is that right? It amounts

to the same thing, doesn't it? A. It amounts to the same thing, I think.

Q. In other words, if,—

Examiner Bernhard: You mean two and nine-tenths cents additional added onto the Montana Western's rate on grain?

Mr. Loble: Yes.

Examiner Bernhard: I see.

Q. In other words, if we take the rate of the Great Northern,—the two intermediate rates together, it is sixty-six and one-half cents. We took that as the figure, did we not? A. Yes.

Q. Of which you got eight and one-half, and the Great Northern got fifty-eight; is that right? A. That is right.

Q. So what really happened over that period of time, from 1933 to 1938, when the Great Northern each year,—or each average year paid you eighteen thousand dollars was that instead of the Great Northern taking fifty-eight per cent of the revenue, it took fifty-eight per cent of the revenue less two and nine-tenths cents per hundredweight; isn't that what it amounts to? A. May I explain a little?

Q. Yes, sure. I would like for you to. A. There was some cash connected with that. There were materials, and there were bills. The interest wasn't paid. And all those items together are what made up the \$18,672.00.

Q. That is right.

Examiner Bernhard: By interest you include bond interest, is that right?

The Witness: That is right.

Q. (Mr. Loble, continuing:) In other words, as a matter of fact, the Great Northern didn't even have to give you two and nine-tenths cents per hundred to do this, did it? A. Not in cash.

Q. No; not in cash. That is why we are coming to this exhibit, is it not? A. I believe so.

Q. In other words; now I want to get down to what actually, it was that the Great Northern gave you as an average over those years, 1933 to 1938, in cash and materials, and that figure appears in the lower right hand corner of Exhibit No. 27, does it not? A. Not in cash.

Q. What? A. Not in cash.

Q. What is that? A. Some of those are in bills. Some of that is bills the Great Northern rendered on the Montana Western that accrued, like ties.

Q. Yes. A. And things of that nature. What I mean is,—

Q. Let me ask you if this is correct: From 1933 to 1938,— A. 1948.



Q. Oh, 1948, yes. —the average yearly deficit, before interest, is not the figure I have been talking about before, but is eight thousand dollars instead of eighteen thousand dollars? A. That is right.

Q. So that in order to get the eighteen thousand dollars that we talked about in the first instance, you have to add approximately nine thousand dollars in interest, do you not? A. That is right; yes.

Q. Now, instead of needing two and nine-tenths cents per hundred weight to make the deficit, before interest, as an actual fact all the Great Northern needs to give to the Montana Western is approximately one-half of two and nine-tenths cents per hundred weight; is that right? A. That is right.

Q. So that if the Great Northern gave to the Montana Western one and one-half cents per hundredweight of its rate of 814 fifty-eight cents, it would wipe out any operating deficit before interest? Right? A. Providing the future years run the same as in the past.

Q. Yes. I am talking now about the past? A. Certainly.

Q. Now, if you take your exhibit, your net revenue from railway operations from 1933 to 1938, all those years were not years in which you lost,—was a losing proposition in revenue; was it? They were not all bad years? A. Not all, in operating revenues and expenses; no.

Q. Now, you start in 1938, and you have \$13,820.00 net revenue from railway operations? A. Yes.

Q. In 1939, \$3,158.00; and in 1940, \$11,517.00,—all these are in the black, are they not? A. Yes, they are.

Q. In 1941, \$3,107.00; in 1942, \$3,125.00; in 1943, \$2,511.00; in 1944, \$5,333.00, and then over to 1946, \$235.00? A. That is right.

Q. That is right? A. Yes, sir.

Q. Those are years which are good years in which you showed a net revenue from railroad operations; is that right? A. That is right.

Q. Now, the other years are in the red, are they not? 815 A. They are.

Q. Now, take profit or loss, before interest, the year that shows a profit or loss before interest, was the year 1938; is that right? A. That is right.

Q. \$8,725.00. Of course when you paid that nine thousand dollars in interest, that wiped that out, did it not? A. Yes.

Q. More than wiped it out? A. That is right.

Mr. Jardine: You mean when they charged it? It was never paid.

Mr. Loble: Yes, charged it. I don't think it was ever paid.

Q. (Mr. Loble, continuing:) Now in 1940 your profit or loss before interest amounted to \$6,997.00; is that right? A. That is right.

Q. In 1944, your profit or loss before interest, \$845.00? A. That is right.

Q. So, to get in the closing hours of this hearing involving the affairs of the people of this community, if the Interstate Commerce Commission, or some regulatory body, would require of the Great Northern a cent and a half per hundred weight of its revenue to be turned over to the Montana Western on a division of rates, and the future was like the past, there would not be an operating deficit before interest? A. That is right.

Mr. Loble: That is all.

Mr. Jardine: That is all.

(Witness excused.)

Mr. Loble: We rest.

Mr. Jardine: Did you introduce those?

Mr. Loble: Yes, I did introduce them, or I do at this time.

Examiner Bernhard: It was received in evidence.

Mr. Jardine: Now, those advertisements, did you introduce those?

Mr. Loble: I read one in the record.

Mr. Jardine: May it be stipulated that it appeared in those papers as of those dates? Is that in the record?

Mr. Loble: Yes. If it isn't, I will stipulate to that.

Mr. Jardine: And, also, the offer still stands.

Mr. Loble: The what?

Mr. Jardine: The offer that was made.

Mr. Loble: I would like to know what that offer is. What do you mean by a "responsible party?"

Mr. Jardine: Well, you will have to ask Mr. Young about that.

Mr. Loble: You ask him.

Mr. Jardine: Mr. Young, tell him what you mean by that.

Examiner Bernhard: You had better take the stand, Mr. Young.

SUMNER B. YOUNG, was recalled as a witness, and testified as follows:

Mr. Jardine: Where are the other two of these? May we go off the record?

Examiner Bernhard: Off the record, Mr. Reporter.

(Discussion off the record.)

Examiner Bernhard: Back on the record:

Mr. Jardine: For the purpose of the record, we want to show the advertisement referred to,—has it been introduced as an exhibit?

Examiner Bernhard: It was read into the record.

Mr. Jardine: That was read into the record, appeared in the Helena,—or, in the Independent Record, Helena, Montana, Friday, June 17th, 1949, and in the Valerian on June 16th, 1949, a newspaper published at Valier, Montana, and in the Independent Observer, a newspaper published in Conrad, Montana, on June 16th, 1949. A. (By Mr. Young:) Is there a question?

Mr. Jardine: If you will read the question he asked me, you can answer it.

Mr. Loble: Let's get the wording of it.

Examiner Bernhard: Will you read the question, Mr. Reporter?

(The following was read by the Reporter: "Mr. Loble:  
818 I would like to know what that offer is. What do you mean by a "responsible party?" A. I have got it now.)

Mr. Loble: I will ask the questions.

#### Direct Examination

Q. (By Mr. Loble:) "The Valier Company hereby offers to sell to any person, or persons, who wish to undertake that task,—"  
No; I will go back: "For Sale. Entire Capital Stock of the Montana Western Railway Company. In order that no possibility of continuing the operation of the Montana Western Railway Company shall be overlooked, The Valier Company hereby offers for sale to any person, or persons, who wish to undertake that task, and who can demonstrate financial responsibility,—" that should be: "and who can demonstrate reasonable financial ability to do so, all of the capital stock for the price of one dollar." What does that mean? A. You mean as to the phrase, "Any responsible person, or persons?"

Q. Yes. A. Obviously, it would be futile to offer shares of stock for sale to an irresponsible person. That certainly would create no opportunity to continue the running of this railroad. Now, I can't tell you in dollars and cents how much financial responsibility a person would have to have in order to take over the task of running that railroad. I am not a financial man. I think this:

819 It may be that the Montana Railroad Commissioners, or maybe the Interstate Commerce Commission, has something to say about who can take stock like that. I think, perhaps, you would have to satisfy the Commissioners' ideas of what financial responsibility consisted of.

Q. What Commissioners? A. Well, I think it may be either the I. C. C., or the Montana Commissioners,—I don't know which.

Q. I don't think you would have to satisfy anyone. A. This is a sale of stock.

Examiner Bernhard: It is the control of a railroad, though.

The Witness: It is the control of a railroad, however, as the Examiner has stated.

Q. (Mr. Loble, continuing:) It may be the I. C. C.; yes. A. Yes.

Q. But what I want to get at is, when you say,—you wrote the advertisement, I take it? A. I did.

Q. When you said, "who can demonstrate reasonable financial ability to do so," and you put this advertisement in that paper, that was an invitation for somebody to come there and buy this stock for a dollar, was it not? A. Some responsible person who wanted to run the railroad, and who could demonstrate reasonable financial ability to do so. We weren't looking for clunks.

820 Q. No. If you were looking for anyone, and weren't just running the advertisement for the purpose of this hearing, or for the humiliation of the people of Valer, why don't you now tell us what you had in mind when someone walked up with a dollar as to who can demonstrate reasonable financial ability? What should we have to meet this offer here? A. I can't tell you in dollars and cents, because I don't know. Here is another thing that perhaps might help as a measuring stick: Whoever takes over this railroad,—and I hope to God somebody does,—would have to make a deal with the Great Northern Railway Company. I think that is perfectly obvious to everybody, because here you have this enormous indebtedness that is owed by the present corporation to the Great Northern Railway Company. Now, it is possible that somebody might wish to take over this railroad, and might be able to make a deal with the Great Northern Railway whereby all, or most, of that debt would be wiped out. I suppose that the Great Northern Railway Company would not wish to take anybody on, allowing them to run the railroad, and have the Great Northern Railway either continue to make up the deficits, or, if they are better bargainers than we have been able to do, if they can make some sort of a deal with the Great Northern whereby the earning power of this small road could be bolstered up so that it would not produce these

821 losses, either operating or general losses, I think the Great Northern would have to pass on what they would think would be a reasonable financial responsibility, and what that would be, I don't know. I would be very much pleased if the Great Northern would step up and buy the stock themselves, if they can get permission from any regulatory body to do so.

Q. What I want to get at is, What was the purpose of that advertisement? To get a buyer, or just the humor of putting up a



railroad for one dollars? A. There was no humor intended. The advertisement means exactly what it says.

Q. What does it say? Here is a dollar. What do you want me to show as my financial responsibility to buy that road,—I haven't even got the dollar. Wait a minute. It has to be in two pieces. Now, there is a dollar. What else do you want me to show? A. Of course, this is just clowning, and,—

Q. Well, this is clowning like your advertisement is clowning. Now, you put in the advertisement, and you said, "who can demonstrate financial ability to do this." Now what else do you want to know about my financial ability? I am not going to tell you, but what else do you want to know. A. I have nothing to add to the answer I have already given.

Q. Then why didn't you in this advertisement say, "The 822 entire capital stock of the Montana Western Railway Company is for sale. Inquiries may be made of Mr. Young,—" I have forgotten the name of that town where you live, wherever it is,—"and full details will be given." That is the way you sell very small matters, let alone a railway. A. The advertisement is signed by the owner of the stock. I am not the owner of the stock. Furthermore, it stands to reason that anybody who wishes to undertake a task as important as running a railroad, must certainly know that they can obtain further information from anybody putting in an advertisement like that; so it would be perfectly silly to put in all this business about referring to somebody if you want to know all of the details.

Q. You knew very well that no one would do anything but laugh that off, when you see that the entire,—when you see that they would sell a whole railroad for a dollar, there must be something funny about it? Or phoney, wouldn't you think so? A. No. It is no laughing matter at all.

Q. It certainly isn't to these people, but the advertisement was. A. I didn't get that question.

Q. This application to abandon isn't a laughing matter, but this advertisement is. A. Well, that is your estimate of it, but not mine.

823 Q. Well, I think you are alone in that. Now, why didn't you make it known in this advertisement that there was an indebtedness against the road, or say it was subject to the indebtedness, or point out that upon inquiry that they could learn that the Great Northern Railway had offered to extend its mortgage, and had offered to put in a rehabilitation program of one hundred and seventy thousand dollars, had offered to pay a continuing deficit,—why not put in some of the favorable things? Why didn't you do that? A. Well, all of those things can be obtained by inquiry, and

anybody answering an advertisement like that would certainly inquire.

Q. You didn't have any answers? A. No answers to date, but I would be glad to get one.

Q. Well, you had one just now. A. Well, that is just clowning, and you know it.

Q. You didn't have any answers, and you didn't expect any, did you? A. We didn't expect one perhaps, but we still hope we may. We still hope we might get something.

Q. All right. A. How about the Valier Community Club? Do they want to take it on?

Q. Why, we don't want,—I can't speak entirely for the Valier Community Club, except they have other problems on. And the people of this area, as I understand it, thinks this is your problem,—this railroad.

Mr. Loble: That is all, I think.

#### Cross Examination

Q. (By Mr. Jardine:) Mr. Young, if any inquiry had been made it would probably have been submitted to you, and would you have given them all the information that you had and that was available at the time the inquiry was made? A. Why, of course.

Mr. Loble: Which is nothing?

A. That is your characterization, which I don't accept.

Mr. Loble, All right.

Mr. Jardine: Well, he didn't seem to think it was nothing a minute ago. He has changed his mind. A. Oh; he was just clowning.

Mr. Loble: I was just trying to find out what financial responsibility is. Here is your dollar back.

Mr. Jardine: I suppose the Interstate Commerce Commission will have something to say about that. I don't believe The Valier Company would have been the final judge.

Mr. Booth: At this time the Board of Railroad Commissioners of the State of Montana desires to offer in evidence a certified copy of Informal Docket No. 1758, decided by the Board of Railroad Commissioners in 1924. This informal memorandum is reported in Volume Seventeen, Montana Utility Reports, at page three hundred and twelve; but in view of the fact the books are not in common circulation, I have prepared a certified copy of the original record in my possession.

Mr. Jardine: We have no objection to it. I have seen the record, and have no objection to it.

(The document above referred to was marked Protestant's Exhibit 28, for the purpose of identification.)

Mr. Booth: The Board of Railroad Commissioners of the State of Montana has nothing further to offer.

Examiner Bernhard: This has been identified as Exhibit No. 28. Is there any objection to it?

Mr. Jardine: No objection.

Examiner Bernhard: It is received in evidence as Exhibit No. 28.

(Protestant's Exhibit No. 28, heretomarked for identification, was received in evidence.)

Examiner Bernhard: I would like to have a statement, Mr. Booth as to the purpose of this Exhibit No. 28.

Mr. Booth: Mr. Examiner, this order which I have just submitted, —or, memoranda, rather, of an informal docket, arose after a protest made against the rates involving grain, and a hearing was held by the Board of Railroad Commissioners in 1923. After the hearing was held, and prior to decision by the Board, conferences were held between the railroad companies involved, namely, 826 the Great Northern Railway Company, and the Montana Western Railway Company, and as a result of those conferences the companies arrived at a pro rata rate on grain. You will note that the last paragraph of the order reads:

"The various situations involved and the existing relations between the Montana Western and the Great Northern railway companies prompted the board to view the former in the light of a branch-line of the Great Northern system from the standpoint of interline freight rates."

I may state that an examination of the transcript discloses there is no different statement of facts than that contained in the record here, except as to a matter of time. However, on the facts presented in 1924, which are substantially the same as those presented by the companies in this instance, the Board of Railroad Commissioners of the State of Montana viewed the Montana Western, insofar as interline freight rates were concerned, as a branch-line, and was willing to drop the informal investigation without decision upon the agreement reached between the companies involved. Mr. Jardine was counsel in that case, and I think I have fairly and correctly stated the hearing at that time.

Mr. Jardine: That is right. The Board of Railroad Commissioners were here and approved the agreement made by the 827 railroads at that time, otherwise they wouldn't have made their order, if it hadn't been satisfactory to the Board of Railroad Commissioners.

Mr. Loble: We rest. And may I express my appreciation,—my personal appreciation and that of the Valier Community Club at your presence here, and the kindly treatment we have enjoyed, and

the full opportunity we have had to present the evidence which we felt was competent and necessary in furtherance of their protest; and to the Court Reporter who has been very zealous and tireless in his efforts; and we would likewise like to express our appreciation to all of our witnesses and those who participated here from Valier, in helping in this very serious matter. And to you, Mr. Examiner, we extend our sincere thanks and appreciation, and we hope that you, sir, will return to this locality.

Examiner Bernhard: Thank you.

Mr. Jardine: I suppose that after that nice speech I will have to get up and thank the Valier Community that they didn't have a,—at least, that they have used up all of their tar and feathers so there are none available. At any rate, we likewise thank the Examiner and we call attention to the Examiner that our case and petition is based upon certain cases, and I will just give you the citations: The first case is the Brooks-Scanlon Company, Petitioner, against Railroad Commissioners of Louisiana, 251 U. S. 396; 828 64 L. Ed. 323; and 40 Supreme Court, 183.

Examiner Bernhard: I just want the U. S. citations.

Mr. Jardine: Yes. Bullock against Florida, 254 U. S. 513; Railroad Commissioner of Texas, and others, against Eastern Texas Railway, 264 U. S. 79; Fort Worth Light and Traction Company against Fagin Bourland, and others,—or, and another, City Commissioner, 267 U. S. 330; and calling attention particularly to the language in 45 Supreme Court 250 in that case; and the City of Helena Light and Railway Company, 63 Montana, 108; 207 Pacific 337, see page 338.

Examiner Bernhard: I didn't get that Pacific?

Mr. Jardine: 207 Pacific, 337. We would likewise call the Commissioner's attention to L. O. C. Finance Docket No. 14663,—

Examiner Bernhard: 14663?

Mr. Jardine: Yes, 14663, Exceptions of Board of Railroad Commissioners of the State of Montana to Examiner's proposed report wherein the,—

Examiner Bernhard: The title of the case, again?

Mr. Jardine: I think I have the citation here. I will have to get it. I attached it here, but apparently,—here it is, on page seven, wherein the brief of the Railroad Commissioners of the State of Montana, signed by Paul T. Keller, as secretary-counsel,—no, I think it is signed by R. V. Bottomley, Attorney General, and also by Paul T. Keller, Secretary-counsel, and others, wherein 829 they say in that case: "Apart from statute or express contract, people who have put their money into a railroad are not bound to go on with it at a loss, if there is no reasonable prospect for profitable operations in the future."



Examiner Bernhard: You are reading from the brief?

Mr. Jardine: That is right.

Mr. Booth: That was the case, Mr. Examiner, in the matter of the application of the Great Northern for abandonment in 1945, I believe.

Mr. Jardine: And with that, we rest, Mr. Examiner.

Examiner Bernhard: Gentlemen, do you want to file briefs at this stage of the proceedings, or do you want to wait in that respect until after the proposed report has been put out?

Mr. Loble: We would rather wait until the proposed report, because I am going to file another petition within twenty days at the close of this hearing, as against both of these railroads involved here before the Interstate Commerce Commission. It will be prepared shortly, and served within twenty days. Whether that matter will have the consideration of the I. C. C. now, or just when, I do not know, but we prefer a proposed report case, if it is convenient to you.

Mr. Jardine: That is satisfactory with the Applicant.

830 Mr. Loble: I prefer a recommended report.

Examiner Bernhard: Then there will be no briefs filed at this stage of the proceedings?

Mr. Loble: No.

Mr. Jardine: No.

Mr. Popplar: Mr. Examiner, I have a motion to make at this time: On behalf of the State of Montana, through the Attorney General of the State of Montana, I move to dismiss the petition of the Applicant on the ground that the evidence as a whole will not support any findings by the Commission that public convenience and necessity will permit the abandonment of the Montana Western Railway Company, but, rather, that the evidence as a whole demonstrates that public convenience and necessity requires the continued existence of the Montana Western Railway Company in intrastate, interstate and foreign commerce.

Mr. Booth: The Board of Railroad Commissioners of the State of Montana joins in the motion of the Attorney General.

Mr. Loble: As does the Protestant, Valier Community Club, upon those grounds, and upon all the grounds heretofore urged at the conclusion of the case of the Applicant.

Mr. Booth: Mr. Examiner, I should likewise like to extend my thanks for the courtesy and kindness extended to the members of the Board of Railroad Commissioners of the State of Montana present, including counsel.

831 Examiner Bernhard: The motions just made, of course there is no use of denying the motions you made. The motions will stand for the action of the Commission.

The hearing is closed.

(The hearing was closed at four fifteen p. m., on Wednesday, July 13th, 1949, at Valier, Montana.)

[Exhibits 1 through 25, filed at said hearing, omitted in printing]

932 BEFORE THE INTERSTATE COMMERCE COMMISSION

APPLICATION OF VALIER COMMUNITY CLUB FOR THE ESTABLISHMENT OF A JOINT RATE ON FREIGHT RATES BETWEEN VALIER, MONTANA, AND CONRAD, MONTANA, OVER THE MONTANA WESTERN RAILWAY COMPANY'S RAILROAD AND THE RAILROAD OF THE GREAT NORTHERN RAILWAY COMPANY, FROM CONRAD, MONTANA, TO MINNEAPOLIS, MINNESOTA.

Complaint—Filed August 1, 1949

The complaint of the above-named complainant respectfully shows:

I

That the Valier Community Club is a voluntary civic organization of Valier, Montana, with a membership of over 250 farmers, ranchers and businessmen, representing a shipping population of 2,000 or more persons, and is composed of citizens and taxpayers who are now, and for a long period of time have been dependent upon the shipping facilities of the Montana Western Railroad Company and the Great Northern Railway Company;

II

That the Montana Western Railway Company is a Montana corporation, operating a line or railway between Valier and Conrad, Montana, approximately 20 miles in length, connecting with the Great Northern Railway Company at Conrad, and operating partly over the railroad lines of the Great Northern Railway Company at Conrad;

III

That the Great Northern Railway Company is a Minnesota corporation and is a transcontinental railroad operating a line of railroad through the State of Montana;

IV

That the area served by the Montana Western Railroad consists of approximately 80,000 acres of irrigated land, and many thousands of acres of unirrigated land; that about the year 1909 said railroad was built; that said railroad was an

integral part of a colonization plan for the development of the Valier country and the bringing of settlers to this area; that the Montana Western Railroad Company is now owned by the Valier Company, a corporation, and was established by its predecessors; in or about 1909 after the construction of said Montana Western Railroad, the Valier Company's predecessors and the Great Northern Railway Company conducted extensive advertising campaigns throughout eastern rural areas, particularly Kansas and Nebraska, urging persons to leave those states and come to Valier to there colonize and settle; that this was a great agricultural area and had excellent possibilities; that there was constructed adjoining said railway and served by said railway dams, reservoirs, and ditches so as to constitute a vast irrigation system so vital to the development of this territory; that said advertising campaign was conducted through pamphlets, personal solicitation, home seekers rates on the Great Northern Railway Company, advertising in the Valierian, a local paper of Valier, Montana, and other media, and that as a result thereof many people left their home states and came to Valier in response to said representations, and located, engaged in farming, and that they and their children have since farmed said area; that the representations above made were true; that said area is one of the greatest agricultural areas in the State of Montana, is progressive, highly productive of all types of agricultural products; that the town of Valier is a growing community with modern buildings and facilities; that the Montana Western Railroad and the irrigation project are under the control of the Valier Company, the Valier Company owning all of the stock of the Montana Western Railroad except qualifying shares of directors and the 934 Valier Company owning a substantial block of the stock of the irrigation company, are engaged in the maintenance and development of said irrigation system, contributed to by the various water users who incorporated under the name of Pondera County Canal and Reservoir Company; that practically none of the persons who came to Valier in response to said representations would have come had there not been a railroad connecting Valier with Conrad, Montana, where is situated the main line of the Great Northern Railway Company; that said Montana Western Railroad Company has always received most of its revenue from a one-way haul, in the beginning bringing settlers and various commodities into the area to upbuild said country and after said country was established, the principal revenue has been in hauling out of said area the results of its productivity, chiefly agricultural products; that similar railroads and branch lines are important to the Great Northern Railway Company as being feeders to said railroad; that as disclosed at said hearing the Great Northern Railway Company has

similar branch lines but reaching a different area; that these branch lines are nearby, to-wit: one from Augusta, Montana, to the main line of the Great Northern Railway Company, one from Pendroy, Montana, to the main line of the Great Northern Railway Company; that per mile the Montana Western Railroad hauls more freight than any of the above-mentioned branch lines; that the area reached by the Montana Western Railroad is a more highly developed agricultural area than any of the area above mentioned into which said branch lines of the Great Northern Railway Company run.

## V

That Montana Western Railroad, as will appear by Finance Docket #16515, has heretofore made application for the  
935 abandonment of its railway line between Valier and Conrad; that an extensive hearing was had in Valier, Montana, from the 11th to the 13th of July, 1949, inclusive, before the Honorable C. A. Barnhard, an examiner of the Interstate Commerce Commission; that reference is hereby made to said hearing and the testimony adduced thereat, and that all of said proceedings be deemed, by reference, to be a part of this proceeding;

## VI

That from the facts adduced at said hearing, the freight rate between Valier and the Twin Cities consists of two separate or intermediate rates—8½¢ per hundred weight from Valier to Conrad, which is the revenue of the Montana Western Railroad, and 58¢ per hundred weight from Conrad to the Twin Cities, which is the revenue of the Great Northern Railway Company; that in the application for abandonment, it was recited under sub-division (e) that the Great Northern Railway Company was and is the holder of \$165,000 worth of mortgage bonds against Montana Western Railroad Company; that it has advanced large sums of money to pay operating, maintenance, and other expenses of the Montana Western, and applicant says further, that on or about January 21, 1949, Great Northern Railway Company notified applicant that it would no longer advance or lend to applicant further sums of money for maintenance or rehabilitation purposes; and that on or about February 28, 1949, Great Northern Railway Company informed applicant that it would advance or lend to applicant no further sums of money for any purpose whatsoever; that the facts as disclosed by said hearing, unqualifiedly show that the reason the Great Northern Railway did not further pay operating expenses of the Montana Western was because the Montana  
936 Western Railway refused to sign a renewal of said mortgage, although it had been renewed several times theretofore; that



of said \$165,000 indebtedness, approximately \$114,000 is represented by money and material advanced by the Great Northern Railway Company to the Montana Western Railway to build the Montana Western Railway in the first instance; that the balance of said \$165,000 is largely interest; that the operation of the Montana Western Railway is and always has been of substantial value to the Great Northern Railway Company because it brings to said Great Northern Railway Company large shipments of freight, and particularly agricultural commodities, and that said Montana Western Railway is a direct "feeder" to the Great Northern; that the Great Northern Railway Company always exercised a dominant influence in the operation of said Montana Western Railway, made repairs, to its equipment, handled its claims, furnished ties and other road equipment (in 1948 the sum of \$17,000), and that the scheme and plan by which it is operated was and has been that the operating deficit of the Montana Western Railroad should be paid and has been paid by the Great Northern Railway Company; that in doing this, both railroads have circumvented the authority of the Interstate Commerce Commission, the Montana Railroad Commission, and all and any other regulatory bodies which would normally control the freight rates; except that as disclosed by said hearing above mentioned, said railroad is in informal Docket No. 1758 before the Board of Montana Railroad Commissioners on September 8, 1924, filed a tariff; that said informal hearing was a result of complaint by shippers and by said combination of local rates said railroads agreed to a 3c per hundred weight reduction;

937

## VI

That at said hearing there were offered in evidence operating statements of the Montana Western Railway Company, and particularly Exhibit 27 and Exhibit 11 which without contradiction established that the Great Northern Railway Company to pay said operating deficit of the Montana Western Railway Company took from its own revenues an equivalent of  $1\frac{1}{2}$ c per hundred weight from its income from the 58c per hundred weight from Conrad to the Twin Cities;

That at said hearing it was disclosed that 2.9c per hundred weight from the revenues of the Great Northern Railway Company was sufficient to pay the operating deficit of the Montana Western Railway and the interest on its indebtedness to the Great Northern Railway Company;

That it is undisputed that for a quarter of a century, from the year 1924, until the present time, the Great Northern Railway Company has paid the operating deficit of the Montana Western Railroad and that it is ready and willing to now pay said operating defi-

cit; that the Great Northern Engineers in the year 1947 made a survey of the condition of the Montana Western Road and determined that approximately \$171,000 was needed for an 8 year rehabilitation program for said Montana Western Road; that said Great Northern Railway Company was ready and willing to advance said amount in money or material and, in fact, in the year 1948, which was to be the first year of the 8 year rehabilitation program, spent approximately \$17,000 on the Montana Western Railway of the \$27,000 allocated for the year 1948; that the Great Northern Railway Company was willing to continue the payment of the operating deficit of the Montana Western and that the reason for the application for the abandonment is an internal controversy between the directors or officers of the Montana Western and the directors or officers of the Great Northern Railway Company, by reason of the refusal of the Montana Western to renew the \$165,000 mortgage owned by the Great Northern Railway Company;

That the action of the Montana Western Railway was unconscionable, and a breach of faith by it, and the owners of its stock, the Valier Company, which had always represented said Railway as an integral part of the development of the Valier country, knowing full well that without said railroad, successful farming will be largely retarded, the grain elevators located at Valier will likely have to be abandoned, to-wit, Farmers Union, Greeley, Gallatin Valley and at Williams, on said line, the International; that the only elevator that has indicated it will remain is Cargill; that the Cargill interests are interrelated with those of the Valier Company, in that officials of the Valier Company are closely identified with the Cargill Company; that the Cargills are one of the world's largest purchasers of grain, and maintain headquarters in Minneapolis, and have extensive holdings throughout the United States and elsewhere; that W. S. Cargill was one of the incorporators of the Montana Western Railway; that one of the principal witnesses in said hearing for the abandonment of said road is likewise the attorney and representative of the Cargill interests, Attorney S. B. Young; that the result of an abandonment of this railroad would be to drive out of competition all the elevators above mentioned, other than the Cargill; that many of the water users on said irrigation project confronted with higher transportation prices, due to the lack of a railroad, would likely abandon or sell their holdings or cease to use water; that said land would likely fall into the hands of the Valier Company, who already own or control 26,000 acres of said irrigation project; that the present rate that exists as separate and intermediate rates should be made a joint rate between Mon-

939 tana Western Railway and the Great Northern Railway Company in such an amount and with such a distribution as to permit the continuance of said Montana Western Railway Company; that the distribution of the freight rate should be, by order of the Interstate Commerce Commission made upon the same basis by the said railroads as they themselves have effected, for a quarter century, that to bring about such a distribution of the rate would not be a hardship to either of such railroads and would be doing only what they have been doing without authority of any regulatory body, and that it is unfair and unjust to those who have settled the Valier country that said railroad be abandoned at the whim and caprice of officers, attorneys, and directors of said two railroads;

WHEREFORE, complainant prays that the defendants be required to answer the charges herein, and that after due hearing and investigation, an order be made creating a joint rate by the railroads above mentioned, and that such railroads be, by reason of their conduct for a quarter century of operation, required to conduct said operation on a joint distribution of the rate, in accordance with their own practices, or in such other manner as the Commission may deem reasonable and just, and that such other and further order be made by the Commission as it considers proper in the premises.

VALIER COMMUNITY CLUB

By EUGENE C. EGAN

*Its President*

LESTER H. NOBLE

Attorney for Valier Community Club

Securities Building

Helena, Montana.

940 *Duty sworn to by Eugene Egan, jurat omitted in printing*

941 BEFORE THE INTERSTATE COMMERCE COMMISSION

**Separate Answer of the Montana Western Railway Co.—Filed  
September 19, 1949**

a. Now comes The Montana Western Railway Co., one of the answering parties herein, and respectively shows, in answer to the Complaint of Valier Community Club, as follows:

I.

Answering paragraph I of the Applicant's Complaint, The Montana Western Railway Co. says that it has no knowledge or in-

formation sufficient to form a belief as to how large a "shipping population" Valier Community Club represents; and, therefore, The Montana Western Railway Co. denies that said Club represents a "shipping population" of 2,000 or more persons, for the purpose of putting Applicant to its proof of such allegation. This answering party alleges, further, that whatever "shipping population" Valier Community Club represents has, at no time, for many years past, been wholly dependent upon the shipping facilities of The Montana Western Railway Co. and of Great Northern Railway Company; but, on the contrary, has been accustomed to receive a very large percentage of its incoming shipments via trucks, and by means other than railroads; and that the greater part of its fuel used for heating purposes reaches this "shipping population" via gas pipelines; and that most of the shipments of petroleum and petroleum products reach this "shipping population" via motor vehicles, over public highways. The Montana Western Railway Co. admits that this "shipping population" has been partially dependent on the shipping facilities of its railway between Valier and Conrad, Montana, in the past, as far as outward shipments of the products of agriculture (mostly grain) are concerned  
942 but alleges that in the last year or more, farmers living in the vicinity of its railroad line have frequently trucked large amounts of grain to Pendroy, Cut Bank, Shelby, Agawam, Conrad, and other points, when railroad cars or storage facilities have been available at those points; and The Montana Western Railway Co. further alleges that it is as cheap (although not as convenient) to truck grain from Valier to Conrad, as it is to ship it between these points via rail. Further, this answering party alleges that its correct corporate name is The Montana Western Railway Co.

## II.

Answering paragraph II of the Complaint, The Montana Western Railway Co. admits that it is a Montana corporation; but says that it operates a line of railway approximately 17.51 miles long which connects with the line of Great Northern Railway Company at a point about 3.2 miles northwest of Conrad, Montana, and that it has trackage rights over the Great Northern tracks from that junction-point to Conrad.

## III.

Answering paragraph III of said Complaint, this answering party admits that Great Northern Railway Company is a Minnesota corporation. The Montana Western Railway Co. says that Great Northern Railway Company operates between St. Paul, Minnesota, and points on the northern Pacific Coast of the United States. It is



admitted that Great Northern Railway Company operates a line of railroad through the State of Montana.

#### IV.

Answering paragraph IV of Valier Community Club's Complaint, The Montana Western Railway Co. alleges that the number of acres of irrigated land served by the irrigation system built by the predecessor Carey Land Act "construction companies" of The Valier Company, and now being completed by The Valier Company, is approximately 72,000; and that West of Valier, between Dupuyer Creek and Birch Creek, there are not more than two or three thousand of irrigated acres (consisting mostly of hay and pasture lands) served by irrigation ditches not forming part of the system above mentioned. Defendant alleges that the irrigated lands served by The Montana Western Railway Co. do not exceed forty-eight thousand acres. The Montana Western Railway Co. admits that there are thousands of acres of unirrigated land in the territory served by its line of railway; and that Conrad Land and Water Company (the first of three corporations which successively attempted to construct the irrigation system known as the "Valier Project," and which were unable to do so because of financial difficulties) was the principal first holder of The Montana Western Railway Co.'s capital stock, with other persons who were interested in said "Conrad Company" owning "qualifying" shares. And Montana Western Railway Co. further admits that the line was first built about the year 1909; and alleges that its principal original purpose was to carry construction material and supplies, and settlers and their effects and possessions, to Valier, from Conrad—the original line having been constructed all the way into Conrad, without any connection with the tracks of Great Northern Railway Company—communication by road being unsatisfactory and difficult in those early days. This answering party alleges, however, that The Montana Western Railway Co. then was, and always has been, and still is, a separate corporation; and that it is not part of The Valier Company or any other corporation. As to the alleged efforts of Great Northern Railway Company and of the predecessor "construction companies" of The Valier Company, to attract settlers to the country near Valier, through advertising campaigns, The Montana Western Railway Co., on information and belief, admits that Great Northern Railway Company has conducted such advertising campaigns, in the past, and that some of the predecessor Carey Land Act "construction companies" of The Valier Company may have; but this answering party denies that The Montana Western Railway Co., or The Valier Company, ever engaged in such advertising activities. It is admitted, on information and belief, that some indi-

viduals were induced, by such advertising campaigns, to settle in the vicinity of Valier, or in Valier itself; and that some of the children of the original settlers are now operating farms near

Valier. The Montana Western Railway Co. says, further, that  
944 the irrigated lands served by the irrigation system of The Valier Company, and some of the unirrigated lands which are located in areas which are fortunate enough to receive sufficient natural moisture most of the time, are excellent localities for the production of grain crops; and that some of these irrigated lands, in the past, have been successfully devoted to the growing of Sugar-Beets; but that at the present time, the cultivation of Sugar-Beets is practiced on a small scale, only; and that the production of cattle and sheep, or the feeding thereof, in the area around Valier, is small, and produces little freight revenue. Further, The Montana Western Railway Co. alleges that the growing season, around Valier, is only about 100 days long, in the average year; and that after October 1st, in each year, the weather in this area is very uncertain, and is liable to cause serious crop losses—particularly in the case of Sugar Beets. However, in the opinion of this answering party, Valier and vicinity constitute one of the best farming communities in Northern Montana, and the yearly production of grains will run between 800,000 and 1,000,000 bushels, barring serious accidents; and the farmers are skillful and progressive in their methods of agriculture. Of late years, The Montana Western Railway Co. admits, the town of Valier has shown some growth (due to the effects of high prices for grain); but the country population has remained stationary, or has even declined slightly, during the last 15 years. Outside of some new and improved private dwellings, this answering party knows of no outstanding contributions to the collection of business buildings and facilities, at Valier itself. There is no modern office building of any significant size, and the business districts of the community have not altered in appearance, in any very significant way, for years. Further answering, The Montana Western Railway Co. alleges that the town of Valier was originally laid out to accommodate an expected and anticipated population of from 5,000 to 10,000 people; and that it was originally expected that the farming land surrounding it would be capable of supporting a large number of settlers on  
945 farm units not exceeding 160 acres in size; and it was believed that these units would be intensely cultivated. But due to economic conditions, and because grain-farming proved to be the most profitable method of using the land, the farm units have gradually (and continuously) increased in size, both on irrigated and non-irrigated lands served by The Montana Western Railway Co.; with the result that the country population (in the Valier area) is now smaller than it was in 1912 or thereabouts. This answer-

ing party further alleges that in the past, from and after the time when its line of railway first was constructed, there have been several periods when agriculture (in Valier and in the surrounding country districts) yielded poor financial returns, and when many farmers could not meet their financial obligations; and that three predecessor "construction companies" of The Valier Company became insolvent; and that more than Five Million Dollars (\$5,000,000) have been expended to construct the irrigation system now being completed by The Valier Company—of which amount, more than Three Million Dollars (\$3,000,000) probably never will be recovered by investors, and will represent irretrievable loss. The Montana Western Railway Co. admits that The Valier Company owns all of its capital stock except 5 shares of stock issued to Directors of the Railroad as "qualifying shares;" also, that The Valier Company now holds legal title to the irrigation system. However, this answering party (on information and belief) alleges that for many years the right to control and operate the irrigation system has been vested in the Carey Land Act "operating company" known as Pondera County Canal and Reservoir Company, a Montana corporation; and that since about the year 1921, Pondera County Canal and Reservoir Company has made yearly contracts with The Valier-Montana Land & Water Company (the immediate predecessor of The Valier Company), and with The Valier Company, whereby the "construction company" agreed to maintain and operate the irrigation system for Pondera County Canal and Reservoir Company, in return for certain sums of money for maintenance charges, fixed by the Pondera Company (yearly), and collected from the holders of the "water stock" (issued by Pondera) owned by the various

946 water-users. And, further, The Montana Western Railway Co., on information and belief, says that The Valier Company is rapidly completing all outstanding items of construction work on the irrigation system; and that The Valier Company, as soon as possible, will convey to Pondera County Canal and Reservoir Company, the irrigation system, and all of its rights to take irrigation-waters from natural streams; this conveyance being required by the terms and conditions of eight (or more) written contracts between the State of Montana and the predecessor "construction companies" of The Valier Company, and being in accordance with the Act of Congress known as the "Carey Land Act," and with certain Statutes of the State of Montana; the end-result of which has been to make Pondera County Canal and Reservoir Company the equitable owner of the irrigation system at the present time, and for a long time past. On information and belief, The Montana Western Railway Co. alleges that The Valier Company now owns approximately 17881.51 shares of the "water stock" (out of a total

of approximately 71084.38 shares issued and outstanding) of Pondera County Canal and Reservoir Company, The Valier Company's predecessor "construction companies" having acquired these shares of "water stock" from defaulting "Settlers," along with the lands to which these shares of "water stock" had been made "inseparably appurtenant;" these acquisitions of land and appurtenant "water stock" having been accomplished by foreclosure of the creditors' so-called "Carey Act Lien," or by Deeds given in lieu of such foreclosure proceedings. This answering party alleges, further, that each holder of a share of "water stock" is obligated to pay to Pondera County Canal and Reservoir Company (the "operating company") a yearly "maintenance charge" fixed by that corporation, whether the holder of that "water stock" actually uses irrigation-water on his land or not; that the present yearly "maintenance charge" is One Dollar per share per irrigation season; that shares of "water stock" represent a proportional ownership in the irrigation system and in the water rights which enable water to be introduced to the irrigation works from natural streams; and that if these yearly "maintenance charges" are unpaid, Pondera County Canal

947 and Reservoir Company is prevented (by its Articles of Incorporation and also by its By-Laws) from furnishing any irrigation-water to a person who is a holder of "water stock," unless and until all charges in arrears shall have been paid up, in full; and that while no specific lien, for unpaid yearly "maintenance charges," is provided for, in Montana, Pondera County Canal and Reservoir Company can get a Judgment, in the Montana Courts, for unpaid "maintenance charges"—which Judgment can be made to constitute a lien on all of the Montana real-estate of the Judgment debtor (including the "water stock," because it is appurtenant to the irrigated land.) The Montana Western Railway Co. further says, that some of the persons who did settle in the Valier area, in the early days, probably would not have settled there, if there had then been no railroad in existence, extending from Valier to Conrad; but it denies that "practically none" would have settled in the Valier area, if the railroad had not been there at the beginning of the settlement days. (However, the irrigation system itself probably could not have been built without the railroad.) This answering party admits that The Montana Western Railway Co., in its early days, received most of its revenue for hauling inbound freight and passengers; and that at the present time it receives 91% of its freight revenue (both in and out) from outbound shipments of agricultural products (mostly grain); and it alleges that its total passenger business now amounts to less than \$250.00 of gross revenue, per year. As to the alleged importance of the line of its railway running between Valier and the junction-point near Con-



rad, Montana, to Great Northern Railway Company (as a "feeder-line"), The Montana Western Railway Co. alleges that for many years its line of railway (above-mentioned) was of some importance to Great Northern Railway Company, as a "feeder-line;" but that at the present time its importance in this respect has diminished; and that on or about February 28, 1949, a responsible officer of Great Northern Railway Company stated to an Attorney representing The Montana Western Railway Co. that "Great Northern" no longer considered this railway to be important, from "Great Northern's" standpoint; and this view was later expressed by the same official, in a letter to The Montana Western Railway Co.'s Attorney. This answering party admits that Great Northern Railway Company owns and operates certain branch lines of the G. N. system serving Augusta and Pendroy, Montana, and adjacent territories; and that these branch lines, over some years, have shown fewer cars handled, per mile of track, than has the line of The Montana Western Railway Co.; but this answering party has no information or knowledge sufficient to form a belief, as to how important (or how detrimental) Great Northern Railway Company thinks those branch lines are, from the "Great Northern's" standpoint. This answering party admits that the area reached by the line of The Montana Western Railway Co. is a more highly-developed agricultural area than those areas served by branch lines of Great Northern Railway Company running to Pendroy or to Augusta.

## V.

The Montana Western Railway Co. admits the allegations in paragraph V of Valier Community Club's Complaint; and joins with said Club in asking that the proceedings had in Finance Docket #16515, including the testimony given at Valier during the Hearing held from July 11th to 13th, 1949, inclusive, be deemed (by reference) to be a part of this present proceeding.

## VI.

Answering paragraph VI of Valier Community Club's Complaint, The Montana Western Railway Co. says that outgoing grain, carried by rail from Valier to Minneapolis, Minnesota, takes a so-called "combination rate;" of which The Montana Western Railway Co.'s "division" is 8½ cents per hundred-weight (for carrying the grain in earload lots from Valier to Conrad), and Great Northern Railway Company's "division" is 58 cents per hundredweight (for carrying grain in earload lots from Conrad to Minneapolis); and that on such interstate shipments, each of these two railways receives an additional 4% of its "division," due to a certain emergency freight.

rate increase granted by the Interstate Commerce Commission. This answering party refers the Commission to "Montana Western's" application for abandonment, for the exact allegations there made; and refers the Commission to pages 39-41 of the Transcript of the Hearing (at Valier), showing that as of March 31, 1949, the total indebtedness of "Montana Western" to "Great Northern" was over Seven Hundred Thousand Dollars, namely: \$737,604.22. The Montana Western Railway Co. says that on or about January 21, 1949, Great Northern Railway Company refused to advance any further sums to it for "rehabilitation" purposes, after "Montana Western" had made clear to "Great Northern" the hopeless financial position of "Montana Western," and its inability to repay such advances, and had reaffirmed "Montana Western's" refusal to renew the Mortgage payable to "Great Northern," on the ground that there was absolutely no hope of paying the renewed or extended Mortgage, and that it was improper to make a solemn agreement to pay sums which the debtor well knew it could not pay, and that there was a possibility of personal liability on the part of the Directors of The Montana Western Railway Co., if they should cause their corporation to renew a Mortgage, well knowing that the corporation never could pay. Further, The Montana Western Railway Co. alleges (see testimony at the Valier Hearing, pages 301 to 307), that Great Northern Railway Company later refused to make a small temporary advance of cash to it, for operating expenses during the inactive portion of "Montana Western's" business year, although "Montana Western" promised prompt repayment; and that a few days later on or about February 28, 1949 (see pages 302 to 306 of the Transcript), Great Northern Railway Company made it plain that no sums of money would be advanced by it, to "Montana Western" for any purposes whatsoever. This answering party alleges (see testimony at the Valier Hearing, pages 288 to 289 of the Transcript) that Great Northern Railway Company was not receptive to the idea of entering into any arrangements whereby the earning-power of The Montana Western Railway Co. would be increased (to the point where it could "break even" or make net earnings), by allowing "Montana Western" to receive from 950 "Great Northern" a proportion of the total revenue for the Valier-to-Minneapolis haul in excess of 8½ cents per hundred-weight; and The Montana Western Railway Co. further alleges (see pages 281 to 308 of the Transcript), that Great Northern Railway Company preferred not to foreclose its Mortgage or to accept a Deed in lieu of foreclosure, but considered a renewal of the Mortgage, and the continued operation of the railroad (between Valier and Conrad) by "Montana Western" to be the "least objectionable" solution, in a situation where most plans were "inherently

objectionable." The Montana Western Railway Co. admits that "Montana Western's" refusal to renew the Mortgage was one of the principal reasons for Great Northern Railway Company's refusal to advance further sums to "Montana Western;" but this answering party denies that its failure to renew said Mortgage was the only reason for "Great Northern's" refusal to advance further moneys; and alleges that "Great Northern's" unwillingness to place "Montana Western" on a paying or "break-even" basis was an operating cause of considerable weight, when the decision to "cut off" further advances and credits was reached (by Great Northern Railway Company). The Montana Western Railway Co. admits that the Mortgage (owed to "Great Northern"), was renewed twice—namely, on or about Dec. 23, 1929, and on or about December 11th, 1937; and says that both of such extensions or renewals were approved by the Interstate Commerce Commission. (See Transcript, pages 19 to 22.) The Montana Western Railway Co. admits that the principal amount of the Mortgage Bond payable to Great Northern Railway Company was and is \$165,000; and that about \$144,688.13 of said amount represents money, materials, and rolling stock, advanced by Great Northern Railway Company (to it) to build the original track between Conrad and Valier; and that the balance of the \$165,000 was largely interest on original advances, which was added to the principal at the time the Mortgage Bond was made and delivered to Great Northern Railway Company. This answering party alleges, that in the past, the operation of its line of railway between Valier and Conrad was of some importance to Great Northern Railway Company, as a "feeder-line;" but alleges (further) that at the present time its importance, in this respect, has diminished; and that on or about February 28, 1949, a responsible officer stated to an Attorney representing The Montana Western Railway Co. (in negotiations with "Great Northern") that "Great Northern" no longer considered this railway to be important, from "Great Northern's" standpoint; and that this view was later expressed in writing, by the same official, in a letter addressed to this Attorney. The Montana Western Railway Co. admits that since 1923 (and probably from a date still earlier than that), it would have been impossible for "Montana Western" to operate, had it not been for the sums of money from time to time advanced to it by "Great Northern," and the materials and supplies and services from time to time so advanced. This answering party admits that for many years last past, it has operated its line of railway (from Valier to the Junction-point near Conrad, and then over the "G. N." tracks 3.2 miles to Conrad) with the understanding that Great Northern Railway Company would advance to it sums necessary to keep the railway operating—such advances to be charged

to The Montana Western Railway Co. if not repaid when due; and The Montana Western Railway Co. says, further, that in the past it has sometimes been able to repay at least a part of sums so advanced but that the total net indebtedness to Great Northern Railway Company has steadily advanced, and that when Great Northern Railway Company first proposed another renewal of the Mortgage, in 1947, "Montana Western" realized that its position (as a debtor) had become hopeless, and that a renewal of such indebtedness would be poor business, and that it would be highly improper, besides. This answering party also says that during 1948, Great Northern Railway Company advanced to it, for the purpose of accomplishing the 1948 portion of an 8-year "rehabilitation" program drawn up by "Great Northern" engineers, money and materials worth approximately \$17,981.00. The Montana Western Railway Co. specifically denies the allegation of Valier Community Club that any of its actions in the past have "circumvented the authority of the Interstate Commerce Commission, the Montana Railroad Commission, and all and any other regulatory bodies which would normally control the freight rates; except that \* \* \* said railroad(s) in informal Docket No. 1758 before the board of Montana Railroad Commissioners on September 8, 1924, filed a tariff; \* \* \* (etc.)" This answering party admits that a rate reduction resulted from the proceedings had in informal Docket No. 1758, as stated. The Montana Western Railway Company admits that according to certain evidence introduced by Protestants at the Valier Hearing (in Finance Docket No. 16515 or the Interstate Commerce Commission), an increase of 2.9 cents per hundredweight, *applied to the average yearly tonnage of all outgoing shipments of all commodities from Valier*, would have brought in gross revenue sufficient to equal the **AVERAGE OVERALL DEFICIT** of "Montana Western" over the period 1933 to 1948 (inclusive) shown on Applicant's Exhibit No. 11; and that according to other evidence (introduced at said I. C. C. Hearing at Valier), an increase of 1.5 cents per hundredweight, *applied to the same average yearly tonnage of outgoing shipments of all commodities from Valier*, would have brought in gross revenue (to "Montana Western") in an amount sufficient to equal the **AVERAGE OPERATING DEFICIT** of "Montana Western" over the same period (1933 to 1948, inclusive) shown on Applicant's Exhibit No. 27. Further, this answering party admits that testimony at said Hearing showed, that based on average yearly tonnage of outward shipments (from Valier) of *grain alone*, an increase of 3.38 cents per hundredweight would have brought in (to "Montana Western") gross revenue sufficient to equal the **AVERAGE OVERALL DEFICIT** of "Montana Western" over the period 1933 to 1948 (inclusive), shown on Applicant's Exhibit



No. 11. However, The Montana Western Railway Co. alleges, on information and belief, that all of the sums of money and all of the property or services advanced to "Montana Western" by "Great Northern" were taken from the general fund and the general resources of Great Northern Railway Company, and were not taken from any particular earnings. The Montana Western Railway Co. admits that since 1923 (and possibly from some earlier date), "Great Northern" has advanced to it money, materials and services, which have enabled "Montana Western" to keep operating; 953 and admits that from August 1, 1947, up until about March 1, 1949, Great Northern Railway Company was ready and willing to continue the same working arrangement with "Montana Western" *if the latter corporation would renew the Mortgage*; but as to the alleged willingness or readiness of Great Northern Railway Company, *after March 1, 1949, to renew said Mortgage and to continue to advance sums of money (etc.) to "Montana Western,"* this answering party alleges that it does not have sufficient knowledge or information to form a belief, and therefore denies the same; and The Montana Western Railway Co. hereby reaffirms its refusal to enter into any such arrangement (with "Great Northern") as has existed in the past. The Montana Western Railway Co. admits that in the fall of 1947, some Great Northern engineers examined the physical condition of the line between Valier and the junction near Conrad, and later drew up an eight-year "rehabilitation" plan which called for the expenditure of around \$171,000 in the eight-year period commencing in January, 1948; and further admits that in 1948 Great Northern Railway Company advanced certain sums of money and certain quantities of material for the 1948 portion of said "rehabilitation" plan; and likewise admits that in 1948, The Montana Western Railway Co. expended about \$17,981.00 out of the sum of \$27,295.00 allotted (in the "rehabilitation" plan) for "rehabilitation" work in 1948; but alleges that on or about September 15, 1947, the General Counsel of Great Northern Railway Company had written to Sumner B. Young (Attorney for "Montana Western" and for The Valier Company and for Cargill Securities Company) that if the Mortgage were "not renewed, \* \* \* the only thing the Great Northern could do would be to cause the mortgage to be foreclosed. \* \* \* ~~See~~ Transcript, pages 285 to 286); and The Montana Western Railway Co. alleges that the inspection by the Great Northern engineers, the setting-up of the "rehabilitation" program, and the advances made, in 1948, for the first year's work (on "rehabilitation") were interpreted by "Montana Western's" Attorney (and others) as intended for the advantage of the "Great Northern," and as preliminary moves looking to the improvement of the road, so that the same would be in better con-

dition when foreclosure actually was accomplished. This  
 954 answering party alleges, further, that on or about November  
 27, 1948, the Chief Engineer of Great Northern Railway  
 Company made it clear (in a letter to C. E. Atwood, the general  
 manager of "Montana Western," and one of its Directors) that  
 unexpended sums, out of the 1948 portion of the "rehabilitation"  
 program, could not be used in 1949, along with the 1949 "rehabili-  
 tation" funds, unless and until the Executive Officers of "Montana  
 Western" should approve the expenditure of the remaining 1948  
 moneys and of the 1949 portion of the "rehabilitation" funds. (See  
 transcript, pages 293 to 295.) And "Montana Western" says,  
 further, that on or about December 18, 1949, W. F. Palin (who is  
 Vice-President and Treasurer of The Valier Company, and is one  
 of its Directors, and is also a Director of "Montana Western")  
 made it plain to Great Northern Railway Company, in a letter dated  
 that day and addressed to the General Counsel of "Great  
 Northern," that "Montana Western's" executives had decided that  
 "Montana Western" must refuse to go forward on this "rehabilita-  
 tion" program unless and until Great Northern Railway Company  
 should inform "Montana Western," in writing, that it desired  
 "Montana Western" to go ahead with the program despite its in-  
 ability to repay "Great Northern," and that acceptance of cash or  
 material for the program would not (in any way) be construed "as  
 an implied agreement to renew said mortgage bonds, or to enter into  
 any other arrangements with Great Northern as to payment of  
 indebtedness." (See pages 297 to 301, of the Transcript.) To this  
 letter, the General Counsel replied (on Jan. 21, 1949): " \* \* \* A  
 continuation of the rehabilitation program on the Montana Western  
 is of no particular advantage to the Great Northern. In view of  
 Montana Western's attitude, as outlined in your letter, Great  
 Northern can not be expected to advance any further cash or ma-  
 terials to Montana Western in furtherance of its rehabilitation pro-  
 gram." (See Transcript, page 301.) On information and belief, The  
 Montana Western Railway Co. specifically denies that The Valier  
 Company has represented the "Montana Western" line to be "an  
 integral part of the development of the Valier country"  
 955 (etc.), at any time; or that it knew, at any time, (or still  
 knows) "That without said railroad, successful farming will  
 be largely retarded, the grain elevators will likely have to be  
 abandoned, \* \* \* (and) that the only elevator that has indicated it  
 will remain is Cargill; \* \* \*" On the contrary, The Montana  
 Western Railway Co. hereby alleges, on information and belief, that  
 grain can be (and some now is being) handled expeditiously and  
 cheaply, by motor vehicles, out of the Valier area to points on the  
 lines of Great Northern Railway Company and the lines of other

railroads (for instance, to the "Milwaukee," at Agawam, Montana). This answering party also alleges that the Transcript shows that Cargill, Incorporated, intends to keep in operation its two elevators in Valier; that L. A. Woolam, an employee of International Elevator Co., testified that if "Montana Western" is abandoned, the fate of his Company's two elevators (at Williams, Montana) will be one of two things: (1) Abandonment, or (2) Continuance of operation, with outgoing grain being trucked from these two elevators to some terminal (see pages 428 to 429 of Transcript), and that construction of a new "International" elevator at Conrad, to facilitate truck shipments from Williams to Conrad was not favored by the President of his Company (see pages 436 to 438 of the Transcript); that Paul Endorff, Jr., manager of Farmers Union Elevator (at Valier), testified that in his opinion, his personal earning-power would drop, if "Montana Western" were abandoned, but he also testified (pages 559 to 560) that if the railroad were abandoned, the business of that Elevator would not "fold up," although its efficiency would be materially curtailed; and that James S. Walsh testified (see pages 577 to 578) that if "Montana Western" should cease operating, the elevator of Gallatin Valley Milling Company, at Valier, "probably" would cease to run; but that salvage of from \$7,000 to \$10,000 was possible, if the elevator were moved. Later, (pages 581-582) he testified that this elevator has been operated on a "cash" basis, and is not qualified to store "loan" grain. The Montana Western Railway Co. further alleges that George Boyd, 956 grain-buyer for Greeley Elevator Co., testified (see pages 587 to 588 of the Transcript) that if "Montana Western" were abandoned, the "chances were" that his Company's Elevator (at Valier) would be moved to another point. This answering party admits that only Cargill, Incorporated, has made firm announcement that its Elevators will remain at Valier, if the railroad is abandoned; and "Montana Western" admits that some of the officials of the Valier Company and of The Montana Western Railway Co. are also officials of Cargill, Incorporated; and also admits that Cargill, Incorporated, is one of the largest purchasers of grain in the world and has an extensive business organization in the United States and in Canada, and in a few foreign countries. "Montana Western" also admits that the headquarters of Cargill, Incorporated, are located at (or near) Minneapolis, Minnesota; that W. S. Cargill (a son of W. W. Cargill, and long since deceased) was one of the incorporators of The Montana Western Railway Co.; and that one of the principal witnesses at the Abandonment Hearing (at Valier) was Sumner B. Young, one of the Attorneys of Cargill, Incorporated, who is also a Director of The Valier Company, and a member of that Company's Executive Committee, and is Secretary

of The Valier Company. The Montana Western Railway Co. expressly denies that "the result of and abandonment of this railroad would be to drive out of competition all the elevators above mentioned, other than the Cargill elevators;" and also expressly denies that another result would be that "many of the water users on said irrigation project confronted with higher transportation prices, due to the lack of a railroad, would likely abandon their holdings or cease to use water;" or that "said land would likely fall into the hands of The Valier Company. \* \* \*." This answering party (on information and belief) admits that The Valier Company now owns approximately 17881.59 acres of irrigated land (with one share of "water stock" in Pondera County Canal and Reservoir Company "inseparably appurtenant" to each acre actually irrigable), and 8884.32 acres of "dry" land; but denies that The Valier Company "controls" any other irrigable or non-irrigable lands at or near the Valier area. As to the allegations of Valier Community Club, contained in paragraph VI of its Complaint, stating that the present "combination rates" on outgoing grains should be replaced by "joint" or "through" rates, and that The Montana Western Railway Co.'s "division" of such new rates should be large enough to permit continuance of "Montana Western," see paragraph VII below. The Montana Western Railway Co. specifically denies that the present Application for abandonment has been due to the "whim and caprice of officers, attorneys, and directors of said two railroads," and also specifically denies that any unfairness or injustice to settlers in the Valier area is involved. On the contrary, the answering party alleges that the Application for abandonment has been based on principles well-settled by decisions of the Supreme Court of the United States.

## VII.

The Montana Western Railway Co. respectfully shows to the Commission that its financial condition is extremely precarious, and that it is in no position to keep its railway operating, pending lengthy hearings on rates before the Interstate Commerce Commission and elsewhere, and pending a possible appeal (by Great Northern Railway Company) to the Courts. It also respectfully alleges that in recent years its actual over-all deficit has greatly exceeded the *AVERAGE* over-all deficit for the period 1933-1948 (inclusive)—the actual over-all deficits having been as follows: 1945, \$23,975.00; 1946, \$15,085.00; 1947, \$24,278.00; and 1948, \$37,019.00. Further, The Montana Western Railway Co. alleges that during the last few years, its actual "operating" deficits have likewise exceeded the *AVERAGE* "operating" deficit of the same period (1933-1948)—the actual "operating" deficit having been \$19,075.00 in 1945,



\$5,185.00 in 1946, \$14,378.00 in 1947, and \$27,119.00 in 1948. This being so, an increase of about 1.5¢ per hundredweight (above 8.5¢) on *all* outgoing commodities, will not (at this time) take care of "Montana Western's" present *OPERATING DEFICIT*; and an increase of 2.9¢ per hundredweight (above 8.5¢), on *all* outgoing commodities, or an increase of 3.38 cents per hundredweight, on outgoing *grain*, alone, will not be sufficient to equal the present yearly *OVER-ALL DEFICIT*. "Montana Western" says, further, that large additional gross and net income is also needed if its line of railway is to be "rehabilitated," and if the bridge over the Dry Fork of the Marias River is to be repaired (as is presently necessary); and that increases in rates *for beyond 1.5¢ or 2.9¢ or 3.38¢ per hundredweight* (applying to outgoing shipments of grain from Valier) will be necessary, if The Montana Western Railway Co. is to be allowed to "break even," and also if it is to be allowed to earn moneys sufficient to make reasonable payments of interest, and of the principal sums of the various debts which it now owes to Great Northern Railway Company. That if this answering party is to continue to operate said railroad, it is necessary that it receive sufficient income so as to build up a reserve to carry it over slack periods when its operating revenues are small, as when outgoing freight is reduced in tonnage due to crop conditions, or when Railroad cars are not available for the movement of grain, or when (from any cause or causes) operating revenues are not sufficient to meet operating costs. If The Montana Western Railway Co. finds it impossible to meet its payroll, some time in the near future, or if it is unable properly to maintain its line of railroad in reasonably safe condition, it will be unable further to operate its road. The Montana Western Railway Co. says, further, that it has no credit rating whatsoever, and that virtually all of its assets are mortgaged to Great Northern Railway Company; and that The Montana Western Railway Co. does not know by what manner or means it can obtain funds to continue to operate its railroad, if additional funds over and above those received from handling freight are required (as they always have been, in the past). The Montana Western Railway Co. expresses no opinion on the question of how much of a "division" (out of a "through" or "joint" rate on outgoing grain) could be sustained, without placing an undue burden on interstate commerce, and without causing the "division" of Great Northern Railway Company to become confiscatory and unlawful.

Except as above specifically admitted, qualified, or otherwise answered, The Montana Western Railway Co. hereby denies

every allegation, matter, statement, or thing, in the Complaint of Valier Community Club contained.

WHEREFORE, The Montana Western Railway Co. prays that the Complaint of Valier Community Club be dismissed; and that abandonment of the railway of The Montana Western Railway Co. be ordered.

THE MONTANA WESTERN RAILWAY CO.

By W. F. PALIN

Its Vice-President

(Signed) \_\_\_\_\_

Art Jardine, Attorney for  
The Montana Western Railway Co.  
First National Bank Bldg.,  
Great Falls, Montana.

960 *Duly sworn to by W. F. Palin, jurat omitted in printing.*

962

BEFORE THE INTERSTATE COMMERCE COMMISSION

**Answer of Great Northern Railway Company—Filed  
September 20, 1949**

Defendant Great Northern Railway Company for answer to the complaint in this proceeding respectfully states:

1. Admits that it is a corporation engaged in business as a common carrier, as alleged in the complaint.
2. Refers to the tariffs covering the rates named in the complaint and to all other tariffs applicable for a correct statement of the rates referred to or complained of herein, and admits the said rates so far as the same appear in said tariffs.
3. Denies that it or any of the defendants herein named has violated or is violating any of the statutes or laws of the United States, or that any thing done or omitted by it or any of them with respect to the subject-matter of the said complaint is in violation of law; denies that any of the rates referred to in said complaint are unreasonable, prejudicial, discriminatory or unlawful, or that complainant has been charged or has paid any unreasonable, prejudicial, discriminatory or unlawful charges, and denies that it or any of the defendants should be subjected to any adverse order, and denies that the complainant is entitled to the relief prayed for or any other relief.
4. Each and every allegation of the complaint not hereinbefore admitted is hereby specifically denied.

WHEREFORE, this defendant prays that the complaint in this proceeding be dismissed.

R. J. HAGMAN,  
L. E. TORINUS, JR.  
Attorneys for Defendant  
Great Northern Railway Company,  
1120 Great Northern Building,  
Saint Paul, Minnesota

Certificate of Service (Omitted in Printing)

964

BEFORE THE INTERSTATE COMMERCE COMMISSION

**Motion of Defendant Great Northern Railway Company—Filed  
September 20, 1949**

Now comes the Great Northern Railway Company, one of the defendants in the above entitled proceeding, and moves that the Commission require complainant, Valier Community Club:

(1) to make its complaint more definite and certain by conforming to the Commission's General Rules of Practice, by setting forth which section or sections of the Interstate Commerce Act it is claimed are being violated by defendants, and by stating upon what specific commodities it is seeking the establishment of joint rates from origins on the Montana Western railroad to Minneapolis, Minnesota, via defendants' lines;

(2) to eliminate from the prayer of said complaint the request that the Commission in this proceeding prescribe the divisions to be received by the respective defendants of the joint rates which may be prescribed as a result of this proceeding; and

(3) to strike from said complaint as immaterial and irrelevant to a determination of any issue presented by the complaint, all of the matters and things alleged and set forth in paragraphs IV, V and VI thereof.

This motion is based upon the said complaint and upon the files and records of the Commission.

Dated at St. Paul, Minnesota this 19th day of September 1949.

R. J. HAGMAN,  
L. E. TORINUS, JR.,  
Counsel for Defendant,  
Great Northern Railway Company

[Argument in support of motion, omitted in printing]

977

## BEFORE INTERSTATE COMMERCE COMMISSION

**Order Denying Motion**

PRESENT: CHARLES D. MAHAFFIE, Chairman, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the records in the above-entitled proceedings, and of motion by the Great Northern Railway Company, one of the defendants in No. 30325, to make the complaint therein more definite and certain, to eliminate from said complaint a request that the Commission prescribe divisions of joint rates sought to be required therein, and to strike as immaterial and irrelevant paragraphs IV, V, and VI of said complaint, including a request that the record made at a hearing in Finance Docket No. 16515 at Valier, Mont., on July 11-13, 1949, be deemed, by reference, to be a part of the record in No. 30325; and it appearing that the reasons presented in support of said motion do not constitute good cause for the granting thereof, and that these two proceedings embody issues which are closely related and should be determined upon a common record:

*It is ordered*, That said motion be, and it is hereby, overruled, without prejudice to the renewal of any portion or the whole thereof at the hearing;

*It is further ordered*, That Finance Docket No. 16515 be, and it is hereby, reopened for further hearing, and that No. 30325 and Finance Docket No. 16515 be heard or further heard for disposition upon a common record, for which purpose the witnesses at the aforesaid hearing in Finance Docket No. 16515 on July 11-13, 1949, will be expected to be available, for cross-examination by the Great Northern Railway Company, at such hearing or further hearing upon a common record, at a time and place to be separately announced.

Dated at Washington, D. C., this 13th day of October, A. D. 1949.

By the Commission, Chairman Mahaffie.

W. P. BARTEL,  
Secretary.

(Seal)



**Transcript of Hearing**

Federal Building,  
Great Falls, Montana,  
Monday, December 5, 1949.

Met pursuant to notice at 9:30 a. m.

BEFORE:

MYRON WITTERS, Examiner.

**Appearances:**

LESTER H. LOBLE, Helena, Montana, appearing for Valier Community Club, Complainant in Docket 30325.

WALLACE KINGSBURY, Valier, Montana, appearing for Valier Community Club, Valier, Montana.

ART JARDINE, 410 First National Bank Building, Great Falls, Montana, appearing for Montana Western Railway Company.

R. J. HAGMAN, 1120 Great Northern Railway Building, St. Paul 1, Minnesota, appearing for Great Northern Railway Company, 1120 Great Northern Building, St. Paul 1, Minnesota. Respondent in Docket 30325.

EDWIN S. BOOTH, Secretary-Counsel, Montana Board of Railroad Commissioners, Helena, Montana, and HORACE F. CASEY, Commissioner, Montana Board of Railroad Commissioners, Helena, Montana, appearing for Montana Board of Railroad Commissioners as protestant in Finance Docket 16515 and as its interest may appear in Docket 30325.

ROSCOE C. LOTS, 314-5th Ave. No., Great Falls, Montana, appearing for Brotherhood of Railroad Trainmen.

**Proceedings—Colloquy**

Exam. Witters: Come to order, please.

This is a hearing before the Interstate Commerce Commission in Docket No. 30325, the Valier Community Club vs. Montana Western Railway Company, et al, and Finance Docket No. 16515, Montana Western Railroad Company, Abandonment. Pursuant to an order of the Commission, the Finance Docket, No. 16515, is reopened for further hearing, there having been a previous hearing in this docket in July, 1949, and it is consolidated with Docket No. 30325 for hearing and disposition on a common record. It is stated in the order that witnesses in the Finance Docket will be expected to be available for cross-examination by the Great Northern Railway Company at the hearing on the common record, but I believe

the Great Northern has advised that they do not wish to cross-examine any of the witnesses who previously appeared in the abandonment proceeding, is that correct?

Mr. Hagman: That is correct, on the ground that we do not consider their testimony as relevant or pertinent to any lawful issue in Docket 30325.

Exam. Witters: We will take the appearances now, first in the Finance Docket, the abandonment proceeding. Mr. Jardine?

Mr. Jardine: Yes, Art Jardine, Great Falls, Montana, appearing for the Montana Western Railway Company.

Exam. Witters: Any appearances for other parties in that 983 proceeding?

Mr. Booth: Horace F. Casey, a member of the Board of Railroad Commissioners of the State of Montana, and Edwin S. Booth, Secretary-Counsel of the Board of Railroad Commissioners of the State of Montana, appearing as protestant in Docket 16515, Finance Docket.

Mr. Casey: I would like to say that Horace F. Casey is also present.

Exam. Witters: Mr. Casey is present?

Mr. Casey: Mr. Booth entered an appearance for me, and I just want the record to show that I am present also.

Exam. Witters: On behalf of the Montana Board of Railroad Commissioners?

Mr. Casey: Yes.

Exam. Witters: Any other appearances in the Finance Docket?

Mr. Loblé: Lester H. Loblé, Helena, Montana, appearing for Valier Community Club. This is the finance docket, the previous case, you are referring to now?

Exam. Witters: Yes.

Mr. Loblé: I appeared in that case, and I also appear in Docket No. 30325.

Exam. Witters: I will take the appearances now in the divisions case, we will call it, 30325.

Mr. Jardine: Art Jardine, 410 First National Bank Building, Great Falls, Montana, appearing for Montana Western Railway Company.

Mr. Booth: Horace F. Casey, Commissioner, and Edwin S. Booth, Secretary-Counsel, appearing for the Montana Board of Railroad Commissioners, as their interest may appear.

Mr. Loblé: Lester H. Loblé, Helena, Montana, appearing for Valier Community Club.

Exam. Witters: And for the defendant?

Mr. Hagman: R. J. Hagman, 1140 Great Northern Railway Building, St. Paul 1, Minnesota, appearing for the Great Northern Railway Company in Docket 30325.

Exam. Witters: Any other appearances?

Mr. Lots: Roscoe C. Lots, 314-5th Ave. No., Great Falls, Montana, appearing for the employees.

Exam. Witters: Brotherhood of Railroad Trainmen?

Mr. Lots: Brotherhood of Railroad Trainmen.

Mr. Hagman: May I ask there, is that for the employees of the Montana Western or the Great Northern?

Mr. Lots: For the employees, the Brotherhood of Railroad Trainmen on the Montana Western.

Exam. Witters: Does that complete the appearances?

Mr. Kingsbury: Wallace Kingsbury, Valier, Montana, appearing for Valier Community Club.

Exam. Witters: Are there any preliminary matters to be taken up at this time?

985 Mr. Hagman: Yes.

Mr. Loble: We have some also.

Exam. Witters: Proceed, slowly, please.

Mr. Loble: We would like here now again to interpose our objection to this hearing being held in Great Falls, on the ground heretofore urged upon the Commission and embodied in its record, through telegrams and letters, and urge now that this hearing should have been held at Valier, where the railroad is located and the various witnesses whose testimony might be pertinent here.

I would like also to point out that indications contained in telegrams that we were notified on November 8, that this hearing was going to be changed from Valier to Great Falls are incorrect, in this, that in a letter of November 8 there was an indication on the part of the Great Northern that they preferred to have it at Great Falls or at Conrad, and did not wish to cross-examine our witnesses, but at no time were we or the Valier Community Club advised that the mere suggestion of the Great Northern Railway Company that they wished to have it at some place other than Valier meant that it would be so held. We therefore urge now that this hearing should have been held at Valier, where the original hearing was held. We are advised by telegram from the Commission or the Secretary that this hearing may be continued to Valier for further hearing if it is necessary. We would like to reserve the right at the conclusion

986 of this hearing, after we have found out what may be the testimony at this hearing, if the necessity arise, to urge that the hearing be continued to Valier for further hearing.

Exam. Witters: Yes, I am authorized to proceed to Valier to continue the hearing if it becomes necessary.

Mr. Loble: We would also like to know whether or not, this being a common record in Docket 30325 and Docket 16515, am I correct in that?

Exam. Witters: Yes, you are.

Mr. Loble: We would like to know whether or not the testimony heretofore offered in the finance docket, No. 16515, and the evidence there adduced, is to be considered as evidence in 30325?

Exam. Witters: Yes, it is, because we are continuing the paging of the transcript. The first page of the transcript in this hearing will be 713.

Mr. Loble: Yes.

Exam. Witters: We will also take the next consecutive exhibit number, which is 29, so it will be a continuous record.

Mr. Loble: So that the evidence that was adduced in 16515 will be considered in 30325 as a part of our case here, in which event a different situation may arise as to the necessity of going to Valier, depending on what may be offered here. Am I correct in that  
987 understanding, Mr. Examiner?

Exam. Witters: Yes, you are correct. I will consult with the parties with reference to that.

Mr. Loble: Thank you, sir.

Mr. Hagman: I have several matters that are preliminary that I would like to bring up at this time.

On September 19 the defendant, Great Northern Railway Company in Docket 30325 filed a motion with the Commission requesting that, first, the complainant, Valier Community Club, make its complaint more definite and certain in certain specified respects, and, second, that the Commission strike from the prayer the request that the Commission in this proceeding fix the divisions of any joint rates that might be prescribed, and, third, that the Commission strike from the complaint paragraphs numbered IV, V, and VI. Attached to that motion was a brief setting forth the Great Northern Railway Company's reasons in support of the motion. On October 13 the Commission denied that motion, stating that the denial was without prejudice to its renewal at the hearing. So the defendant, Great Northern Railway Company, in Docket 30325 at this time renews that motion for the reasons which were set forth in the brief which accompanied the written motion of September 19.

Exam. Witters: Have you anything to say in regard to that, Mr. Loble?

Mr. Loble: No. I assume that, the Commission having  
988 overruled the motion and given them the right to renew it at this hearing, it is done for the purpose of enabling counsel to make a record of it, and on the final determination of it if the Examiner desires to rule on that motion he may do so. I assume



that is it. We have here before the Examiner a motion which, if it is granted, the hearing of course is at an end so far as we are concerned, at this time.

Exam. Witters: Yes. Well, I will overrule the motion. However, I wish to say that the complaint does not strictly comply with our rules of practice, and it is somewhat indefinite. I assume that what is desired in this complaint is a joint rate on grain, is that right?

Mr. Loble: That's right.

Exam. Witters: And is it your desire to confine that joint rate only to Minneapolis? I would assume that.

Mr. Loble: Either way. Some of it goes out to the coast. The primary thing is—

Exam. Witters: Well, I would assume that a great deal of grain goes to places other than Minneapolis.

Mr. Loble: To all points. Grain goes to all points.

Exam. Witters: Well, it is your desire then to have joint rates to all points on the Great Northern, is it?

Mr. Loble: That's right.

Mr. Hagman: That is on grain?

Exam. Witters: On grain. Now these rates are at present 989 on a basis of a combination of proportional rates?

Mr. Loble: That's right.

Exam. Witters: And is it your desire that the joint rates when established will be the same in Montana as the present combinations, or something else than that?

Mr. Loble: That's right. I make my position clear here. At the hearing heretofore held the testimony showed the inception of the railroad, the Montana Western, and how it came into being there, the activities of the Great Northern in the settlement of that community, the Montana Western, and the Cargill interests.

Exam. Witters: Well, I don't believe you quite understood my question.

Mr. Loble: Yes, I think I did. Now it was disclosed at that hearing that the rate between Valier and Conrad was  $8\frac{1}{2}c$  per cwt. and  $58c$  from Conrad to Minneapolis. As we urge in this petition, the Montana Western has been operating over these years on practically that rate, with the exception of one change, and that  $11\frac{1}{2}c$  a cwt. would pay any operating deficit, the average operating deficit between 1933 and 1948, and that  $2.9c$  per cwt. would pay any operating deficit including interest, and we say in our petition and urge that the Great Northern, by reason of its having over the years paid much of the operating deficit, according to part of this testimony, and by reason of a rehabilitation plan whereby 990 they in 1948 put in \$17,000, and were willing over a period of a few years, I believe, to put in \$171,000 into the Montana

Western in maintenance, in improvements, that in truth and in fact over the years  $1\frac{1}{2}c$  per cwt. of the Great Northern's revenue has gone back into the Montana Western, and that approximately  $2.9c$  has gone back into the Montana Western to permit it to operate and pay its interest on its indebtedness which is owed to the Great Northern, who loaned the money, \$114,000, to start this railroad, so that what we are asking is nothing different than now exists. We are asking them to continue what they have been doing instead of abandoning the situation, abandoning this railroad, and to make a distribution, to have a joint rate and a division of that joint rate based upon what they have customarily done over these years, based on their testimony.

Exam. Witters: I understand you are asking a greater share of the revenue than you now receive?

Mr. Hagman: Than the railroad now receives?

Exam. Witters: Yes, than the Montana Western now receives.

Mr. Loble: We don't care who gets it, whether the Great Northern or the Montana Western gets it, so long as this railroad continues to operate. They have operated it this way themselves.

Mr. Hagman: The Great Northern?

Mr. Loble: Both of them have.

991 Exam. Witters: What I am asking is this: you are asking for a greater share of the total revenue on grain, but are you asking a lower rate than you now have, or—

Mr. Loble: No.

Exam. Witters: The same rate?

Mr. Loble: The same rate. We have an anomalous situation in representing the people here. Obviously, from the testimony, the Montana Western Railroad, dominated by the Cargill milling interests, does not want the railroad operated, they want to operate by truck, as I understand. We want the railroad operated, the people of that community want it operated, and testimony was adduced at the previous hearing that would indicate very strongly that the Great Northern wanted to see this railroad operated, and were willing to put money into its rehabilitation, and that the reason the people of Valier and this community stood in danger of the abandonment of the railroad was because Mr. Young of the Montana Western Railroad, as attorney for them had refused to permit his company to extend a mortgage that had been extended many times, and that that was the occasion for the Great Northern refusing to go ahead, as they naturally would if they would not renew the mortgage which had been in existence since the inception of this railroad. That is one of the reasons. We are caught in the middle of that. That is why we are here.

992 Exam. Witters: Well, I believe that clears up the complaint in my own mind. You are asking for joint rates on grain to all points on the Great Northern, with just, reasonable and equitable divisions of those joint rates?

Mr. Loble: That's right.

Mr. Hagman: May I ask a question there?

Exam. Witters: Well, I hadn't quite finished.

Mr. Hagman: Excuse me.

Exam. Witters: And you are not seeking a reduction of the present combinations of grain rates, but a greater share in the total revenue?

Mr. Hagman: To the Montana Western?

Exam. Witters: To the Montana Western.

Mr. Loble: In accordance with what has been heretofore done. We are asking that they do nothing other than what has been heretofore done as between these two railroads in the matter of operation, and no difference in the rates.

Exam. Witters: That clarifies the complaint in my mind.

Mr. Hagman: Now Mr. Loble has made some statements with which I do not agree. I don't think that this is the time to controvert those statements or enter into any controversy. I just want the record to show that I do not agree with what Mr. Loble has said in connection with this matter in regard to the Great Northern. And I want the record to be perfectly clear that the Great Northern's appearance in this proceeding is only in Docket 30325, and the issues in that case we were not aware of until a  
993 moment ago when they were developed by questions of the Examiner, and we do not believe that many of the statements that Mr. Loble made are pertinent to any issue that is now presented in this docket, 30325.

Mr. Loble: Let me have this clear then. You say your appearance is in Docket 30325?

Mr. Hagman: That's right.

Mr. Loble: Do you now take the position that the testimony that has been heretofore offered in 16515, upon which you said that you did not want to cross-examine, may not be considered a part of this record?

Mr. Hagman: I have a motion which presents that question. I would like to develop it in that way, and if I don't answer you satisfactorily I'd be glad to have you bring it up again.

Exam. Witters: For the Commission I will say that it is a part of the record, but he may not consider it pertinent to the Divisions case.

I have received a telegram from the Governor of Montana, which I will read: (Reading the following telegram):

"Helena, Montana, Dec. 5, 1949.

Examiner Myron Witters,

Montana Western Railway Hearing,

Federal Building, Great Falls, Montana.

994 Unable to appear personally at hearing but I again join with Valier Community Club members and others in protesting abandonment of Montana Western Railway. It is imperative in my opinion that equitable solution be sought to retain the line. Loss of this direct transport system would occasion untold hardship not only to Pondera farmers and merchants but citizens of wide area who trade with them. I strongly urge that abandonment be not permitted.

JOHN W. BONNER, GOVERNOR OF MONTANA."

That will be spread on the records.

Mr. Hagman: I'd like to clear up one thing. My recollection is that Examiner asked counsel for the complainant whether he was asking for just, reasonable and equitable divisions, and counsel said yes, but later counsel indicated that the division he wanted the Montana Western to have was something equivalent to what he claims the Great Northern has heretofore expended in the way of aid to the Montana Western. Now it seems to me those two things are inconsistent. The statute says that the Commission's authority is to establish just and equitable and reasonable divisions, that is its only power under the law, but just to have the record clear, what Mr. Loble is asking is not that, but that whatever amount is necessary to keep the Montana Western going, the Great Northern should advance.

Exam. Witters: That can be argued on briefs.

Mr. Hagman: Yes, but we are talking about the issues, and I think it should be clear what our position is.

995 Now I have another motion that I would like to make. The Great Northern now moves that the Commission rescind that part of its order of October 13 which attempts to bind the Great Northern Railway Company by the evidence adduced in the abandonment proceeding, Finance Docket 16515. The Great Northern is not a party to the abandonment proceeding. It was not represented at the hearing, and it took no part therein, and the opportunity given at this time to cross-examine the witnesses in the abandonment proceeding cannot lawfully result in making the testimony in the abandonment proceeding binding on the Great Northern in Docket 36325.



Mr. Loble: I am somewhat shocked at that statement of counsel in view of the letter heretofore signed by the Great Northern in which they said they did not wish to cross-examine, and wished to have the hearing held in Great Falls. I say that that motion, in the face of their statement heretofore made on November 8 that they did not wish to cross-examine the witnesses and were therefore willing to have the hearing here is hardly in keeping with the motion that is being made. In other words, now having gotten us here, to take the position that you are not being given an opportunity to cross-examine the witnesses is hardly in keeping with what I'd expect.

Mr. Hagman: Now, just a moment. In the first place, you did not quote all of my letter. In the second place, I have no objection to going to Valier, and I shall offer no objection providing  
996 there is any reason for it whatever, so please don't proceed on the theory that I am objecting to going to Valier.

Mr. Loble: You did object to going to Valier, did you not?

Mr. Hagman: I did object on the ground that I think the testimony of the witnesses is immaterial to the issues in the complaint case, and the further fact that the protestants in the abandonment case had already put in their testimony, I assumed that it would not greatly inconvenience the few people that I thought you would have from Valier on the abandonment case to come down here. I stated my position to the Commission, and the Commission, after a considerable wait, not hearing from you, I presume assumed that you had no objection and therefore it was set here.

Mr. Loble: I didn't know that because the Great Northern wrote a letter that changed the venue, any more than if I wrote a letter.

Mr. Hagman: We simply asked to have the location of the hearing changed to either Conrad or Great Falls, and that is within the province of anyone.

Mr. Loble: There is nothing in your letter to indicate that it would be changed any more than if I would make the request.

Exam. Witters: The motion is denied.

I think the logical procedure would be to hear any further witnesses in the finance docket, the abandonment proceeding,  
997 and then take up the complainant's witnesses in the joint rate and divisions case, and then hear the defendant's case.

Mr. Hagman: In the complaint case?

Exam. Witters: Yes.

Mr. Loble: So far as we are concerned, the testimony that we have to offer is short, because of the fact that I am going upon the assumption from the ruling of the Examiner that the testimony

heretofore offered in 16515 is taken as a part of this hearing, and necessarily most of the things that we have to offer have heretofore been offered. We do, however, in this instant case, that is 30325, want to call witnesses to show conditions that have arisen since the hearing in July as to the revenue shipments in furtherance of Docket 30325, and so we will call our witnesses, if we may.

Exam. Witters: You may call your witnesses.

Mr. Hagman: I understood the Montana Western was to go first in support of its application for abandonment.

Mr. Jardine: We have no further evidence to offer on the abandonment hearing.

Exam. Witters: Call your first witness.

Mr. Loble: The testimony we are about to offer is in continuation of evidence in Docket 16515 and in support of our complaint in Docket 30325.

WALLACE KINGSBURY was sworn and testified as follows:

998

Direct Examination

Q. (By Mr. Loble) Will you state your name, please. A. Wallace Kingsbury.

Q. Where do you live? A. 16 miles west of Valier, Montana.

Q. How long have you lived in Montana? A. Well, I was born and raised here, 54 years ago.

Q. You are a rancher? A. Yes sir.

Q. And you have been active in ranching activities, have you? A. Yes sir.

Q. In what line of activity in ranching have you been engaged in the past? A. Well, my business has been confined mostly to the sheep business until about three years ago, when I dissolved that interest and went into farming and cattle raising.

Q. How extensive has been your sheep business in the past? A. Just before going out of the business I operated 5600 head.

Q. What is the size of your holdings in the vicinity of Valier? A. I own and operate 7500 acres.

Q. You have been active, have you, Mr. Kingsbury, in the live-stock association here, so far as sheep are concerned? A. Yes. For two years I served as the President of the Montana Woolgrowers Association.

Q. That is a state-wide association of sheep men, is it not? 999 A. Yes, that's correct.

Q. Are you familiar with Valier and this railroad? I assume you are? A. Yes, I would say that I was fairly well acquainted with the town. I think my wife thinks I spend more time in town than I do on the ranch.

Q. You are engaged in farming now? A. Yes sir.

Q. Wheat farming? A. Yes sir.

Q. In order to bring this up to date, give the Examiner the background, if you will, of the beginning of Valier and the part this railroad played in the development of Valier, the water system that has been developed there, and the types of commodities that have been raised, those that have been shipped in and those that have been shipped out, in a general way, from the time that you can remember? A. Well, the town, as I recall, began about 1909, and about that same year the railroad was brought in there. The railroad of course had its inception by virtue of the fact that it was necessary to transport considerable materials for the construction of dams and irrigation canals, owned then by the Valier, Montana, Land and Water Company. Through a succession of bankruptcies and other means it is now reduced to the Valier Company, so in stating Valier Company I wish the record 1000 to show that that means any of the predecessor companies. It is far easier if we use one term than by constantly changing back and forth.

Exam. Witters: I think the record already shows that.

The Witness: I believe it does also. The railroad itself was constructed primarily for the purpose of bringing supplies and settlers into the community. After the community had become established it then became necessary to ship all produce out over that railroad. Originally of course, until the country became plowed up and farming became extensive, there was very little outgoing freight, it was all incoming freight. Today the reverse is true. There is very little incoming freight, it is practically all outgoing freight. So that from its inception the road has been a one-way haul.

The community started out with great expectations. I think the confines of the original city would be sufficient for a city of at least 10,000 people. At the present time I think the population totals about 750, and it's remained more or less constant for a matter of 25 years. The town itself has increased in the number of residences, the number of business structures, and the number of businesses over the years, and more in particular during the last 10 years, which has shown marked improvement. The taxable valuations as given in the testimony under Finance Docket 16515 show that the assessed valuations have increased materially.

1001 Q. Now, Mr. Kingsbury, when you speak of it being laid out for a city of 10,000 that was just some optimists that laid it out that way? A. Well, it was undoubtedly a dream of the people that originally started the irrigation system.

Q. That is not true of Valier? A. That is not true. The population is constant. It has remained at approximately 750 population over a matter of, I would say at least 20 to 25 years, and it certainly shows no retrogression either now or during the last 20 years. It has improved in the number of new residences, the number of new businesses, and the number of new business structures, in an enlarged high school and grade school system, and an increased amount of outgoing freight revenue, by virtue of the fact that our farming interests have developed to a very high degree, and the production is as good on this particular project as any section of the State of Montana.

Q. The Valier agricultural area is one of the best irrigation areas in Montana, is it not? A. I think that there isn't any contention in the mind of anyone here but what it is.

Q. And this entire community, the town and surrounding area, is one of the progressive, forward-looking agricultural areas in Montana, is it not? A. That is true.

1002 Q. So this hearing or any previous hearing does not involve the matter of abandonment of a railroad or anything else by reason of the community having gone backward, does it? A. No.

Q. And the community has gone forward?—A. Yes.

Q. And is continuing to go forward? A. That is right.

Q. Now, in the beginning the development of this Montana Western Company was inspired by the Cargills, was it not? A. Yes sir.

Q. And the Cargills are in the milling business are they not? A. Yes sir.

Q. One of the largest in the world, isn't that correct? A. I think that's correct.

Q. They maintain an elevator there? A. Two elevators.

Q. Two elevators in Valier? A. Yes.

Q. What elevators are they? A. The International Elevator Company, and the Greeley Elevator Company, and the Gallatin Valley, and at the present time a burned down Farmers Union Elevator.

Q. That burned since the last hearing, did it not?—A. That burned within the last month, and the contemplation is that  
1003 it will be rebuilt.

Q. Now the Cargills interests, as was heretofore testified to, are the dominating interest in the Montana Western, are they not? A. Yes sir.

Q. Well, while the Montana Western as a railroad is a separate operation from Cargills, the interlocking relationship of the two



discloses that the domination of the Montana Western is by the Cargills interests?

Mr. Jardine: I object to that as leading. I think when the attorney testifies instead of the witness it is going a little too far.

Exam. Witters: Well, the Valier Company owns stock in the Montana Western? A. Yes.

Mr. Loble: Leading or not leading, I think there is no question that it is so interlocking that the Cargills Estate is the dominating interest in the Montana Western Railroad.

Mr. Jardine: The Cargills Estate does not own the railroad Company. There isn't any such thing as the Cargills Estate, as far as I know. The Montana Western Railway Company owns the Valier Company, and the Cargills interests I think probably own a majority of the stock in the Valier Company.

Mr. Young: Perhaps I'd better make a statement on this matter.

Exam. Witters: Have you entered an appearance in this 1004 hearing? Will you please state your name for the record.

Mr. Young: I am S. B. Young, Minneapolis, Minnesota. I was present at the former hearing held in July of this year, at Valier.

There is a corporation formed under the laws of Minnesota that is known as the Cargills Security Company. That company was formed originally to liquidate the estate of W. W. Cargills, and it has since been continued as a holding company. Now the Cargills Security Company owns 60 odd per cent of the stock of the Valier Company, and the Valier Company owns all of the stock of the Montana Western Railway Company except directors' qualifying shares. Now that is the exact relationship.

Mr. Loble: That's right. Then is it that you were about to say?

Mr. Jardine: No, I don't think it's right. I think it's about 100% wrong, whether you try to get him to say it's right or not.

Q. (By Mr. Loble) By whatever name you want to call it, can you find any interest controlling the Montana Western other than the Cargills interests? A. Nothing but the five qualifying shares of directors.

Q. Now then, what is the name of the water company there? A.

It is now known as the Valier Company.

1005 Q. And tell the Examiner what the water company is? A.

The water company is a company formed to deliver irrigation water to the users extending from Valier east to several miles east of the Town of Conrad, and north and south of a south-east line.

Q. When we speak of the water company we are talking about a company that is extensive in its ramifications, is it not? A. Well, that's quite right. This Valier Company has lands of its own on this

irrigation project, both irrigated and dry, but its principal business was to deliver water to people who own water stock which entitles them to a certain amount of water per share per year for the payment of certain maintenance costs.

Q. Now, how large a project is that approximately, in acres? A. Well, I believe it represents 80,000 acres of irrigable land, some of which perhaps has never been irrigated.

Q. And that project consists of a dam, does it not? A. They have a storage dam, and they have a lake, Lake Francis, which is a storage reservoir.

Q. And how much of this land do the Cargills own? A. Well, the Valier Company owns 17,000 acres, as I understand it, irrigated land, and 9,000 acres of non-irrigated or dry land.

Q. Now I want to ask you whether it is a fact that the thing that caused Valier to come into being and caused the development of this—

Mr. Jardine: Again I renew my objection to the leading nature of the questions. I think he could ask him what the cause was instead of making a statement of what it was and then asking the witness if that is true.

Mr. Loble: I haven't finished the question.

Mr. Jardine: I have a right to object.

Mr. Loble: No, you haven't any right to object until I finish my question.

Mr. Jardine: I only interrupt at this time because at the outset of the question it clearly shows that it is a leading question, putting the words into the witness's mouth.

Mr. Loble: I will withdraw it. He's kind of out of humor this morning. Monday is a bad day. Just keep your blood pressure down.

Q. (By Mr. Loble) Now, Mr. Kingsbury, for the benefit of the Examiner and Mr. Jardine, tell us—

Mr. Jardine: Just a minute. Now it isn't for my benefit at all, and I ask that that be stricken from the record.

Exam. Witters: It may be stricken.

Q. (By Mr. Loble) Will you for the benefit of the Commission explain how Valier and its community came into being, and the part that the Valier Water Company and the railroad played in changing the country from what it was into what it is now?

Mr. Loble: That was all right, wasn't it?

1007 Mr. Jardine: I haven't said a word. A. The predecessor companies of the present Valier Company were interested in seeing the present Valier irrigation project colonized. There was a company known as the Valier Farm Sales Company, and that company, working through the Great Northern Railway, advertised

the Valier area through the eastern states of principally Nebraska and Iowa. I think, however, that it was more extensive than that, but at least through Nebraska and Iowa they did considerable concentration, and then a great many of the present farmers and land owners in the Valier community were induced to come there by the information of these two promotion and sales organizations.

Q. That started about what year, would you say, approximately?

A. Well, '11 and '12, at least when most of the balance of the State of Montana was being opened up to homestead entry.

Mr. Hagman: 1911 and '12? A. Yes.

Q. (By Mr. Loble) The Carey Land Act came into play here, did it not? A. The Valier Company is working under the Carey Land Act orders inasmuch as the Act itself was designed for the purpose of permitting any private capital to organize an irrigation system by which they could place water on this Government dry land and reclaim it at a price of I think 50¢ an acre.

1008 Q. Now then, about how many bushels per year, if you recall, has been the production in this area of grain? A. Well, over the last six or seven years the area adjacent to Valier proper has produced 800,000 to a million bushels of various kinds of grain.

Q. And what have you to say as to the quality of this grain? A. The grain is very high quality.

Exam. Witters: High protein? A. Not only high protein, but it carries a high test, wheat of better than 60 pounds to the bushel of wheat, it will run 61, 62, 63 pounds, and the barley is exceptionally high. Furthermore, it is an area that is conducive to the growing of mustard seed, which has been a crop that hasn't been under Government restriction, and has been a very profitable crop for the community to grow, for the farmers to produce.

Q. Tell the Examiner how important the Montana Western Railroad has been in the matter of transporting out this grain? A. Well, a million bushels of grain to be hauled a distance of 20 or more miles to a railroad would be a gigantic job for the average farmer or group of farmers in any community.

Q. Where is the grain hauled to from the farm? A. It is usually hauled to a rail head, an elevator center, such as Valier, Conrad, Shelby, Cutbank or Pendroy.

Q. Is there any place to haul this grain, would there be any place if Valier and its elevators were taken out of the picture? A.

There would have to be farm storage and then following 1009 farm storage it would then again have to be reloaded on trucks and hauled to one of these other adjacent towns to this community, and those towns in turn have only the facilities for handling the grain that they produce themselves.



Q. The Cargills Company, which maintains two elevators in Valier, have they indicated to you through Mr. Young and, in previous testimony and Mr. Young since that time what they will do? A. They maintain that they will still maintain their two elevators in Valier, in the event that the railroad is abandoned, and that they will then truck the grain from those elevators to a rail head undesignated.

Q. You have recently received a letter from Mr. Young, have you not, outlining a plan, and the suggestion that everyone ship by truck? A. I have. Mr. Young even goes further in this letter to make the statement that the Cargills interests are trucking grain from as high as 150 miles into the Twin Cities, and that in certain instances here within the State of Montana there are large trucking firms hauling grain into the Twin Cities from as far as Glendive, Montana.

Q. What do you say would happen if there should be an abandonment of the railroad, and the Cargills interests remain with their two elevators, the other elevator operators having indicated what they would do in the previous hearing? What do you see in the picture there? A. Well, I see that there would undoubtedly be some large trucks placed on our highway, to the ruination of the highway, and the necessity for the farmer to haul his own grain to some rail head.

Q. If the Cargills interests, who own the two elevators there, continued to maintain them, and that is all there'd be, with the Valier Company owned by the Cargills, together with a substantial portion of the land, if the railroad abandonment should be authorized, state whether or not the remaining farmers would find themselves under the domination of the Cargills interests? A. Well, with only that one firm operating elevators, if they took their grain to the elevators in that town that certainly would be the story. They would have no choice of a market without hauling it a greater distance.

Q. Now, Mr. Kingsbury, since our last hearing, which I believe was in July, are you acquainted with what has occurred in reference to shipments by rail from Valier during the months following the July, 1949, hearing, up to now? Have you got some figures there?

A. At the time of the hearing on the 9th, 10th and 11th of July, testimony was brought out that it was near impossible to get cars for shipments of grain from Valier. The testimony further shows that wherever there was a competing carrier it didn't seem too tough to get cars, and many carloads that should have gone out of Valier over the Montana Western Railroad went to Agawam over the Milwaukee Railroad, or went to Pendroy, Conrad, Shelby and Cutbank over the Great Northern Railroad, those



towns being favored with cars at the expense of the Valier community. Following the hearing, and at the instance of the Community Club of Valier, and Mr. Atwood of the Montana Western Railroad Company, we were able then to get an almost unlimited supply of cars for grain shipment. My recollection is that in the month of August—now these figures are only approximate, but I think the Montana Western Company can undoubtedly produce figures to verify the statement that I am about to make—there were 190 carloads of outgoing grain. In the month of September the outgoing grain shipments totalled 220 carloads. Now if you will wait just a minute while I do a bit of an addition here, I will probably give you some more figures. During the month of October grain shipments outbound from Valier totalled 63, and 16 carloads of sheep, and 4 carloads of sugar beets. Inbound shipments in the same month—

Exam. Witters: October? A. The month of October, 5 carloads of sheep, and strange as it may seem, Mr. Jardine, one carload of gasoline.

Mr. Jardine: Did I ever say they didn't ship any gasoline 1012 in there?

Mr. Loble: Yes.

The Witness: (Continuing) One carload of insulation, one carload of cement, and another odd carload of fuel oil. Now in the month of November there were 45 carloads of outgoing grain, 2 carloads of beets, and inbound shipments of 2 carloads of cement and one carload of pellets.

Exam. Witters: What sort of pellets? A. Feed pellets, protein feed.

Q. (By Mr. Loble) Now, Mr. Kingsbury, at the time we had the hearing in July there was discussion and testimony, particularly urged by Mr. Jardine, that all oil, gasoline and fuel oil came by truck, is that right? Is that your recollection? A. That happens to be a condition, I guess, that is more or less universal. It is not an exception to the Town of Valier or the community of Conrad, but—

Q. But do you find anything new in the picture since our July hearing? A. Economically the situation has somewhat reversed itself. We have had unusually high fuel oil, gasoline, distillate and diesel oil prices, but today we suddenly realize that it is to the advantage of a dealer in petroleum products if he is fortunate enough to have a bulk station on a railroad, because he doesn't have to ship from any particular refinery, but can possibly pick up a carload of gasoline that is stranded in transit some- 1013 where, or that is costing some dealer who thought he could unload it to advantage considerable money in demurrage or

other cost that can be diverted to your advantage to your bulk station.

Q. Now, since the last hearing do you see anything new in the picture of the outgoing shipments? I refer particularly to sheep and sugar beets. Was that discussed before? A. Well, the railroad is of vital necessity to this community in the shipments of those two products. It would be humanly impossible to truck sugar beets from that area to the sugar factory at Chinook, and if we lose the railroad we are then forever denied the right to grow sugar beets, which is a product that is of vital necessity to that community. It not only provides an outlet for a man's efforts in the winter time, but it also provides an outlet for other feeds than grain feeds, and I speak principally of alfalfa, and alfalfa in turn is quite necessary to a rotation program and the continuing development of your soils. It also provides the ingredient, or excrement, I should say, from livestock so necessary to the full utilization of your soil and its increased productivity. Livestock feeding is profitable where you have the by-products of sugar beets, namely, the tops and pulp, and the pulp would have to be returned almost by necessity over the railroad from Chinook to Valier. Should we lose the railroad we would be denied all those things. Now we do have a community built on excellent soil conditions, but after 1014 20 years of growing practically the same kind of crops it is more than essential that we do some rotating there if our high productivity is going to continue.

The sugar factory at Chinook will substantiate these figures, that we produce a higher content of sugar on our beets than they grow in the Chinook area proper, and they are very anxious that we do not lose this railroad, so that they continue to have that area to grow beets.

Q. The sugar beet activity in this area was greater before the war, was it not? A. Oh, my, yes. They had as many as, well, I think I can safely say 3800 acres of sugar beets in Pondera County.

Q. Will you explain for the record the change from sugar beets and why it occurred, and the probability of changing back to sugar beets? A. Well, the labor incidental to the growing of sugar beets is very, it doesn't require much in the way of brains but it requires the man-power, and it is usually left to Mexicans, negroes and Indians. Very few white people are willing to do that kind of work. The grain growing is so mechanized today that it produces a rather easy and quick return, and it's been found to be more profitable than the growing of the bulk of your crops of sugar beets and having the trouble with labor as we had during our war years, so that it's just one of those things that has

1015 passed by the board, but will return again, for the simple reason that the profitable angle of growing small grains is decreasing, and the realization on the part of the farmers and stockmen up there that it is very necessary to return to the production of alfalfa hay and sugar beets and the attendant production of livestock.

Q. Now, on sheep, the sheep industry is one of fluctuation over the years, is it not, like a good many other industries, is it not? A. That is right.

Q. The normal sheep population of Montana would be approximately how many million sheep? A. Well, I think over a matter of a great many years we have probably remained at an average of  $3\frac{1}{2}$  million in sheep population.

Q. And, incidentally, cattle would be less, would it not? A. Oh, yes.

Q. Now, the sheep business, which you say you were formerly in, was one of the substantial businesses in that area, isn't that right? A. That is right.

Q. Now has there been a change from that, from sheep raising, and is there a likelihood of a change back to sheep? A. No. The old days of sheep on the range in Montana is practically a thing of the past, for a number of reasons. First of all, you can't get competent help. The profitability of the business has been lost through excessive costs of operation, and with the exception of certain isolated areas in Montana that are only adapted to sheep in their grazing I don't think you will see a return to a population of  $3\frac{1}{2}$  million, unless it is done in irrigated pastures such as they have in the State of Ohio, as an example.

Q. I note from your figures sheep being shipped in and sheep being shipped out during the past few months, is that correct? A. Well, the outgoing sheep was the dissolution of two sheep operators, and the incoming sheep were simply the replacements of sheep of one operator remaining in business.

Q. And do you look for increased tonnage for the Montana Western at all from the sheep industry? A. No, I don't think that that will be a factor in sustaining them.

Q. About sugar beets, however, you think differently? A. Sugar beets can materially increase their tonnage hauls.

Q. Now I notice from Exhibit 27 of the previous hearing, which is a statement of profit and loss in net revenue from railway operations before taxes and before interest for the years 1943 to '48 that the—pardon me, I should say Exhibit 11. May I withdraw that question? I note from Exhibit 11, which is entitled "Revenue tops carried, operating revenue and total costs for years 1933 to 1948 inclusive," I note that the year having the highest



1017 operating revenue, I believe, was 1943, no, I think 1946 was the highest, in tonnage, 37,773 tons, and the highest revenue in any one year was approximately \$48,000 in the year 1946. What have you to say as to what has occurred since our last hearing in July, eliminating the rest of the year 1949 but just taking the number of carloads that you have described there, as to what would be the approximate revenue for these few months? Q. Your statement is that they shipped out in this particular year, '46 I believe you stated?

Q. Yes. A. 37,000 tons, 37,700 tons?

Q. Yes. A. Well, calculating a carload as 90,000 pounds, and I think many of those that left Valier this summer went 100,000, but using that same figure of 90,000 pounds or 43 tons, 500 carloads would be 22,500 tons, which is about two-thirds of what they had in their biggest year of '46, and a figure I think that will stand up to \$95.00 revenue per carload would give the railroad \$47,500 gross revenue.

Q. Then state whether or not in the months of July, August, September, October and November, if those are the months you detailed? A. No, not July.

Q. August, September, October and November of 1949, 1018 since the hearing? A. That's right.

Q. State whether or not the gross revenue in those four months does not nearly equal the entire revenue of the highest year, the best year that the railroad ever had? A. Well, I would say that it would be within 60% anyway of their biggest year.

Q. Mr. Kingsbury, if the rest of the year 1949 is on the same basis as their other years, would you say that 1949 would be likely in operating revenue their top year between 1933 and now? A. It very likely could.

Q. So that, from the standpoint of revenue what have you to say as to whether or not this is a declining revenue that they are faced with, or an increasing revenue? A. Well, I would say the year 1949 certainly will put this railroad in black figures, that is I mean for the operating year of 1949 at least, I think that they will show black.

Q. Now, to epitomize what has transpired before, you will recall, that on Exhibit No. 27, heretofore introduced, the average loss per year on this railroad—

Mr. Jardine: For what year?

Mr. Loble: For the years between 1933 and 1948, before interest.

Q. (By Mr. Loble) (Continuing) The average loss before 1019 interest was approximately \$9000 a year, according to this exhibit, that figure right down at the bottom there? (Showing exhibit to witness) A. That is correct.



Q. And state whether or not it was determined at the time of the last hearing; and whether or not it is your testimony, based upon the available information, that a cent and a half per cwt. of the revenue— A. That is revenue on the grain shipments only?

Q. Yes. Would pay the operating deficit of the Montana Western before interest, is that right? A. That is my understanding.

Mr. Hagman: Before what?

Mr. Loble: Would pay the operating deficit.

Mr. Hagman: Before what?

Mr. Loble: Before interest on its investment, without the interest charges.

Mr. Hagman: Well, there is a difference between interest on bonds and interest on investment.

Mr. Loble: I am talking about outstanding bonded indebtedness.

Mr. Hagman: Well, that clears it up.

Q. (By Mr. Loble) From the previous hearing, Mr. Kingsbury, the amount of indebtedness from the Montana Western to the Great Northern was approximately what amount? A. \$765,000 sticks in my mind. I think that is within a matter of probably \$10,000 one way or the other.

Q. You recall that the original bond issue was approximately \$114,000, was it not? A. No, wasn't it \$144,000?

Mr. Jardine: No, the original bond issue was \$165,000, I think, but the original indebtedness I think that went into the railroad investment was \$144,000 and the rest was interest, I think. A. The figure that you have in mind, Mr. Loble, of \$114,000—

Q. I will withdraw that question, Mr. Kingsbury, because I want to get it accurately, and I will get it from another witness. The bonds are owned by the Great Northern, are they not, whatever the amount may be? A. That is true as far as I know.

Q. Just so far as you know, based on your information, the bonds have never been paid, and there is accumulated interest on them, is that right? A. That is right.

Q. And the first money that went into this railroad at its inception; whether it was \$114,000 or \$144,000, or what, from your information it was obtained from the Great Northern, was it not?

Mr. Hagman: Just a moment. I object to that on the ground that the witness has not been qualified.

Mr. Loble: I think that's correct. I will call some other witness on that.

Mr. Hagman: Will you read my objection, please.

(Objection read by the reporter.)

Mr. Hagman: (Continuing) To answer that question.

Mr. Loble: Are you through?

Mr. Hagman: Yes.

Mr. Loble: I will withdraw the question. I don't think he is qualified.

Q. (By Mr. Loble) Now state whether or not from the figures covered at the previous hearings it was determined that 2.9¢ per cwt.— A. This also pertains to grain shipments?

Q. Yes, pertaining to grain shipments, would pay the average operating deficit and pay the interest on the bonded indebtedness owed the Great Northern? is that your recollection? A. I think that was determined at the previous hearing.

Mr. Hagman: Just a moment. May I ask the witness there, when you answer the way you did, you are relying upon exhibits that were introduced, and you are merely stating now what those exhibits show? A. That is right.

Mr. Loble: That's right.

Q. (By Mr. Loble) Do you know from the previous testimony that the Great Northern together with the Montana Western had entered into a program of rehabilitating the Montana Western railway?

Mr. Hagman: I object to that question on the ground that counsel is asking the witness a question with respect to what is in the previous testimony. The transcript will show for itself.

Mr. Loble: Well, I think the transcript does show, but it concludes his testimony on this one point, and what he says won't show anything different than what is in the record.

Exam. Witters: You are familiar with the testimony on that subject, Mr. Hagman?

Mr. Hagman: Yes sir, but I want the record now to be perfectly clear on whether the answers of the witness with respect to rehabilitation, a rehabilitation program, are based upon information of his own knowledge, or whether he is merely repeating testimony that he has heard in this case.

Mr. Loble: Well, I will say unequivocally that it is based on what he heard and not on his own knowledge.

Q. (By Mr. Loble) Mr. Kingsbury, you have in mind when you testify you are testifying on your own knowledge about what you heard at this previous hearing from Mr. S. B. Young of the Montana Western to the effect that a program of rehabilitation had been agreed upon between these two railroads, and what it would involve in the amount of money?

1023 Mr. Hagman: Well, I object to generally asking the witness to detail the evidence into the record.

Exam. Witters: Well, he's just laying a basis for further questions, I think.

Mr. Loble: That's right. A. Approximately \$171,000 had been promised by the Great Northern Railway Company for the rehabilitation of the Montana Western railroad over a period of some eight years, starting with the year 1948, and I believe a matter of \$10,000, or it could incidentally have been \$17,000, had already been put up by the Great Northern and expended by the Montana Western Railway Company when certain flood waters caused so much havoc in Pondera County—one of the few counties in the State of Montana that was so blessed with such a deluge of water—that by necessity of existing conditions this program was abandoned for the balance of the year 1948, and with the express understanding given by the Great Northern Railway Company to the Montana Western Railway Company that any unexpended funds of this program designated for the year 1948 could be allocated to the year 1949, 1950, or until so used.

Mr. Hagman: Now, Mr. Loble, I think right there it would save considerable time if you would be kind enough to ask the witness what witness made these statements that the Great Northern promised to advance these sums of money, and if possible at what page.

1024 The Witness: I can't state what page. I know it was read into the record, Mr. Hagman, by Mr. Sumner B. Young.

Mr. Hagman: Then you attribute this statement to Mr. Young? A. I do.

Mr. Hagman: Just so we know where to look for it.

The Witness: And I think it can be further substantiated by testimony given by Mr. C. E. Atwood.

Mr. Jardine: May I ask a question. Do you mean that Mr. Atwood did give that on the stand or could give it?

The Witness: No, I think it was brought out in the hearing, Mr. Jardine.

Mr. Jardine: You think that Mr. Atwood did give that testimony?

The Witness: I think that Mr. Atwood did, although I can be greatly in error.

Mr. Jardine: I was just trying to find out whether you were saying that Mr. Atwood had or could now do it.

The Witness: No, I am not sure, but I think on cross-examination that Mr. Atwood did bear out the fact that he had spent this money.

Mr. Hagman: Mr. Examiner, I want to make another objection on the utter futility of putting a witness on the stand to detail the previous testimony which is in the record. It is utterly confusing.

Exam. Witters: Well, I thought it was the basis for further questions.

1025 We will take a short recess at this time.

(Whereupon, at 11:30 a.m., the hearing recessed briefly.)

Exam. Witters: Come to order, please. Let the record show an adjournment at this time until 1:30 p.m.

(Whereupon, at 11:45 a.m., the hearing recessed until 1:30 p.m.)

#### AFTERNOON SESSION

Exam. Witters: Proceed.

Q. (By Mr. Loble) Mr. Kingsbury, just before adjournment for lunch you testified in reference to the rehabilitation program of the Great Northern in connection with the Montana Western, and you were asked by counsel for the railroad company if you could refer to the pages that you had in mind in connection with your testimony. At that time you said that you could not. During the recess have you had opportunity to examine the transcript? A. I have, sir.

Q. Now for the benefit of counsel and the Commission will you refer to the pages of the transcript that you had in mind in reference to your testimony, having to do with Mr. Seyton, is it? A. Yes, Seyton.

Q. Mr. Seyton, who is an engineer, I believe chief engineer of the Great Northern. Will you refer to the pages of the testimony you had in mind when you were testifying? A. Well, starting in the first paragraph at the top of page 298 of the transcript, and 1026 continuing through page 299, and again in the middle of page 339.

Mr. Loble: All right. Thank you.

Mr. Jardine: Who was the witness?

Mr. Loble: The witness was Mr. Young, was it not?

The Witness: In the first instance, on page 298 and 299, it was Mr. S. B. Young, and on page 339 it was Mr. C. E. Atwood.

Q. (By Mr. Loble) Will you identify those people? A. Mr. Young is counsel for the Cargills people, and the Montana Western in particular, and Mr. Atwood is the superintendent and general manager of the Montana Western Railroad.

Q. One other question now. In the complaint in the instant case here we have said there was a shipping population of approximately 2,000 persons who are represented by the Valier Community Club. State whether or not that is substantially correct. A. I would say, taking the families as a whole and calling them shippers, that would not be too large a number, 2000 would not be too large a number.

Mr. Loble: You may cross-examine.

#### Cross-Examination

Q. (By Mr. Jardine) Mr. Kingsbury, you live about 16 miles west and a little north probably of Valier? A. That is correct.



Q. Approximately? A. Yes.

1027 Q. And in the past your ranch has been a grazing ranch, especially or mostly sheep, I mean until the last few years?

A. That's right. I only did such farming as was necessary for the maintenance of my herds.

Q. And I think you said in recent years you had started wheat farming? A. That's right.

Q. How much wheat did you raise this year, approximately, Mr. Kingsbury? A. Well, I would say that I have in the neighborhood of 15,000 bushels of wheat.

Q. How long have you been raising wheat? A. I started first in the crop year of '47.

Q. Between your ranch and Valier there is quite a little wheat raised? A. That's right.

Q. There is some ratching, I mean some grazing land and some land that is not devoted to the raising of agricultural crops such as wheat or mustard seed or something like that? A. Yes.

Q. West of your ranch it was practically all grazing land, was it not? A. Well, that situation has changed about the same time

I started farming, Mr. Jardine. On the west side of Birch  
1028 Creek, which is my west boundary, there are a great many acres now in crop.

Q. Well, Birch Creek runs by your place in a north— A. Northeasterly direction.

Q. Northeasterly direction? A. That's right.

Q. And that would be opposite your holdings? A. It's on the opposite side of the creek from my holdings.

Q. That would be actually right north of your holdings I don't believe there is any farming? A. That's right.

Q. Nor west of your holdings is there any farming? A. Yes, the old Hamilton ranch is pretty well farmed today.

Q. Are they raising grain today? A. Yes.

Q. Where do they haul that? A. They haul that into Valier.

Q. How far from Browning? A. They would be approximately  
28 miles, but Browning doesn't happen to have a grain elevator.

Q. And that would be probably about the same distance from Valier, would it? A. No, they wouldn't be to exceed, oh, 20 miles.

Q. They are about 4 miles from your ranch? A. I would  
1029 say approximately 4 miles.

Q. That is all north of Birch Creek? A. Yes. I am quite confused when you get to asking me which side of the creek because it flows not in a north and south direction or east and west, but a northeasterly direction.

Q. Generally the Blackfoot Reservation is north of Birch Creek? A. That's right.

Q. And the grain that is raised on the Blackfoot Reservation except on the Hamilton ranch is raised mostly easterly from your ranch, is it not? A. That is right, north from the Town of Valier.

Q. North and a little west? A. North and a little west, yes.

Q. And how far are you from Pendory there at your ranch? A. Roughly, 22 miles.

Q. And that is on an oiled highway, is it not? A. That is on an oiled highway.

Q. What is the number of that highway? A. 89.

Q. Now the start of this irrigation project, as you recall, was somewhere along in 1909 and maybe a year or two prior to that? A. That is correct.

Q. And the Town of Valier originated or started at practically the time that the irrigation project, that they started to 1030 build the irrigation project? A. That's right.

Q. And the same general interest organized the Town of Valier that were interested in the water company? A. That is so.

Q. The railroad, I think, was established along in, I am not too sure but I suppose your date, about 1909, is about right, and that was established by the people, or some of the people at least, who had an interest in the original project up there, the original water company, is that right? A. That's right.

Q. Did you understand that? A. Yes, that is my understanding.

Q. And the railroad, as you originally stated, was used originally mostly for transporting material in to the Town of Valier? A. That's right.

Q. And since the project has become settled in farming the use of the railroad to a large extent, as shown by the previous hearing, is for outgoing shipments? A. That's right.

Q. Consisting I think of over 90% of grain, I think that's correct, isn't it? A. I think that's correct.

Q. Now I think you said the original company was the 1031 Valier Montana Land and Water Company. Actually the original company was organized either in '08 or '09 I think, it could have been '07, and was the Conrad Land and Water Company? A. Yes.

Q. And in that company were interested the Conrad people whom you know here locally in Great Falls, W. G. Conrad and C. E. Conrad? A. That's right.

Q. And they had an interest in the original company, the Conrad Land and Water Company, isn't that true? A. That's right.

Q. And then within a matter of two or three years or so that company went into receivership and a company called the Valier Montana Land and Water Company was organized, do you know that to be true? A. Yes, I know these were added and subtracted,

and it is very confusing. We are in agreement anyway, Mr. Jardine.

Q. I just wanted to get the record straight to show that there were four companies. Following that, about 1912, Valier Montana Land and Water Company went into receivership because they hadn't sufficient funds to finish, and the Montana Land and Water Company was organized, and that latter company continued as the construction company until along in I think 1942 or 1944, when as a result of proceedings in bankruptcy under Chapter 10 of the Bankruptcy Act the assets of that company were transferred 1032 to the new company, which is now known as the Valier Company? A. That's correct.

Q. That was the last and final reorganization up to date? A. That's right.

Q. And included in the assets transferred under the bankruptcy proceedings were the 1500 shares of stock in Montana Western Railway Company, listed I think at a value of \$1000, which probably is overestimating the value? A. Mr. Jardine, was it only 1500 shares, or was it 1995?

Q. Well, I would have to refer to the bankruptcy proceedings, but I know there are actually 1510 shares issued and outstanding. There were at one time 2000 shares issued, and for some reason 500 of them were cancelled, apparently were issued without assets to represent them, I don't know. A. Recall that now.

Q. But there are actually 1500 shares issued and outstanding, the other 500 shares that were issued at one time were cancelled? A. Yes.

Q. And total outstanding stock now is the 1500 shares? A. Well, I will assume that that is correct.

Q. Now, the present company and its predecessors in interest, that is the Valier Company, is actually not the operating company?

Exam. Witters: On the irrigation project?

1033 Q. (Continuing) On the irrigation project, it was originally the construction company? A. That's right.

Q. I am just getting this so the record will be straight. Actually when the original company, Conrad Land and Water Company, and its successors in interest, Valier Montana Land and Water Company and then the Valier Land and Water Company, when they or any of them sold either land or water stock, at the same time in selling land with water stock or in selling water stock alone, they sold stock then in Teton County Canal and Reservoir Company, whose name has since been changed to Pondera County Canal and Reservoir Company, so that the people who bought either land and water stock, which would be deeded land which the company itself owned and water stock that they owned, or where they bought

water stock which became pertinent to Carey Act land, those people in their contract to purchase contracted to buy and bought shares of stock in the Teton County Canal and Reservoir Company, which is the actual company that is supposed to operate the irrigation service. Actually, as a matter of practice, the Valier Company and its predecessors have operated the project, I mean they have actually delivered the water. I think for the last 10 or 15 years that has been through a contract with Pondera County Canal and Reservoir Company. In other words, Pondera Canal and Reservoir

Company is now the operating company and could operate  
1034 it this year through anybody that they chose if they chose so to do, isn't that true, Mr. Kingsbury? A. Yes sir.

Q. And the present company, the Valier Company, and its predecessor, the Valier Montana Land and Water Company, only operated the project in the last 10 or 15 years through contract with the Pondera County Canal and Reservoir Company? A. That's right.

Q. Mr. Kingsbury, of the 80,000 shares of stock which you mentioned, 80,000 shares of stock in what is now Pondera County Canal and Reservoir Company, actually to date there have been issued under 72,000 shares of stock, and the total irrigation under the system at present is under, I think it's between 71,000 and 72,000 shares, that's all that has been issued? Much of the Carey act land on which this balance of 8,000 shares was to be issued has been returned, so it no longer is Carey Act land, and if any additional stock was issued it would have to be on lands other than Carey Act lands at the present time, I think that is the situation, so actually and probably, for all purposes here, there are lesss than 72,000, between 71,000 and 72,000 of irrigable acres under the project, and that probably is pretty close to as high as they will go. Now of that the present company owns in the neighborhood of 17,000 irrigable acres? A. I believe that was my statement,  
1035 wasn't it?

Q. Yes, I think that was your statement from the record, and I think that is pretty close to the acreage? A. Well, I don't mean that I am going to give you the last acre. I am only giving an approximation. That is just reason.

Q. I am not trying to ask that? A. I realize that.

Q. I am simply trying to bring out the fact that on the present project, consisting of between 71,000 and 72,000 acres, the present Valier Company is the owner of 17,000 acres of irrigable land, which is represented by 17,000 shares of stock in Pondera County Canal and Reservoir Company? A. Yes.



Q. And the balance of that stock is owned by individual settlers or persons who have bought it and are now either living or operating on the project? A. Yes.

Q. The balance of 9,000 acres of dry land is part of the holdings of the Valier Company, but has no interest in Pondera County Canal and Reservoir Company? A. That was my understanding also.

Q. That's correct. Now that land isn't divided just into dry and irrigated land. Some of the 40s are part irrigated and part dry, and that accounts for most of the dry land owned by the company?

A. Yes.

1036 Q. The Town of Valier and the project, when it was originally organized, do you recall, Wallace, that that was at a time that irrigation projects were being organized throughout the west? A. Yes.

Q. Idaho, Wyoming, and Montana? A. That's right.

Q. With great hopes and expectations of profits that would come to everyone connected with it? A. That's correct.

Q. The Town of Valier was platted I think, as you said, large enough for a town of between 5,000 and 10,000 people, probably up to 10,000, its facilities were laid out that way, the water mains and sewer mains extending over a large territory, much bigger than a town of that size would normally require, isn't that right? A. I agree with you.

Q. And the hope of the people who had invested money in this original project of course was that, the construction company, was that in the end they would reap a profit from their investment, the original investment, the Cargills, the Withers, and everybody else, the Russells, the Conrads and everybody that put money into the project, expected to make a profit, both from the project and from the Town of Valier, selling lands in the Town of Valier? A.

1037 Yes.

Q. As a matter of fact that has not in any event been realized, isn't that true, Mr. Kingsbury? A. That's right.

Q. The original investment in the project I think runs between \$4,000,000 and \$6,000,000, the cost. Out of that the original investors up to date, or all the investors up to date, have received a return on the first mortgage bonds of \$650,000, and in the reorganization the holders of the second mortgage bonds, amounting to \$1,930,000, received one share of common stock for each \$5,000 par value of first mortgage bonds?

Mr. Loble: I wonder if these things are known to Mr. Kingsbury, if he knows about all that. That is is it just a statement by counsel? I don't think he should be bound by things he doesn't know anything about.

The Witness: Well, I know they haven't received any great part of what they put in. As to the actual figures as Mr. Jardine gave them to me, I have no reason to say that they are not correct, but I can't verify them.

Q. (By Mr. Jardine) Now, Mr. Kingsbury, do you know whether or not the people when they originally started this project expected the project to be colonized and the land and water stock to be sold within a very short period of time, three to five years? A. Yes, I do. I think that is correct. I think 1038 that they expected to have their money and be done gone.

Q. Well, at least they expected it to be sold under contract, the land and water stock? A. Yes sir.

Q. And of course the land sold under contract, if the amount of the contract hadn't been paid, would bear interest just like any other indebtedness? A. That's right.

Q. And that situation didn't materialize, I mean they didn't colonize that project in any three to five years, and practically it took 20 to 25 years, isn't that correct, before that was accomplished? A. I believe you are correct in that statement.

Q. And so the whole thing, the whole idea, while it looked like a good idea on the surface, didn't pan out, I mean the project and the return of the money on the investment, and the size of the Town of Valier, and everything, didn't turn out the way the original people expected it to do? A. No, I don't think it did.

Q. Now, with reference to the grain, I think you said there was between 800,000 and a million bushels of grain a year in that territory to be shipped out on the Montana Western Railroad? A.

Yes, I think that's been the production during the last six 1039 or seven years.

Q. The figures, I think, Mr. Kingsbury, will show that in the last 15 years the grain shipped out of Valier, Manson and Williams—we will introduce evidence of this too, Mr. Loble—was around between 23,000 and 24,000 tons, the last 10 years between 25,000 and 26,000 tons, and your figures in tons at a million bushels would be 30,000 tons. You said between 800,000 and a million bushels, so if you take 5,000 off of 30,000, you would be pretty close to the figure? A. Well, it would be possible for that other 5,000 to escape from Valier and go into Pendroy, Cutbank and Shelby.

Q. Well, I suppose some grain was fed on the farms? A. Well, I wasn't figuring on what would be fed. I think there's actually that many bushels that are shipped out.

Q. Well, at 800,000 I think it would be 24,000 tons, at a million I think it would be 30,000 tons, if my figures are right. Now when you say that if the railroad was abandoned the grain would have to be hauled to Conrad by the farmers in trucks, that is assuming

that the elevators were unable to ship by truck themselves, is it not? A. Yes, it is assuming that the elevators remained there even.

Q. Well, if the elevators remained in operation the elevators would ship it? A. They would then find their own transportation.

Q. And I don't know, Wallace, whether you said the other  
1040 elevators would leave Valier or not. I didn't understand the answer you gave to the question. A. My recollection is that the testimony submitted at the hearing on July 9, 10 and 11 was to the effect that the other elevators other than Cargills and Company would not remain there if the rails were taken out. That is my recollection of the testimony. That is only my recollection. Cargills thought they would remain but the others, as I recall, either stated that they would leave if they couldn't ship by rail or they would close down or wouldn't handle any grain.

Q. The other record will show anyway what that situation was?  
A. Definitely.

Q. Now, with reference to sugar beets, the record I think shows that the amount that the Montana Western Railway received from sugar beets, from an acre of sugar beets shipped from Valier to Conrad is greatly under the amount that it receives from an acre of grain. I don't recall whether the figures were given or not, do you? A. Well, I agree with you to that extent anyway. They are shipped in open gondola cars. There can't be very much loss in transportation, very few claims submitted, so I assume that the rates are such that it would be cheaper than grain.

Mr. Hagman: On that point, the sugar beets move into Montana destinations, do they not? A. That's right.

1041 Q. (By Mr. Jardine) Referring to the number of cars you gave for September and October and November, I assume you received those figures from the Railroad Company at Valier?

A. Well, I got them from sources that I deem to be reliable. The books of the Montana Western would substantiate or correct those figures.

Q. We haven't the books here. I just assumed you got them from the records. A. They are reasonably correct. They weren't actual tabulation by dates.

Q. Well, the record is up there, and I thought probably you had got them from the record itself. A. That's right, they are reasonably close.

Q. And I notice that in October you refer to a car of gasoline and a car of fuel oil, in November there apparently wasn't any gasoline or fuel oil? A. I don't believe there was.

Q. And I don't suppose you know anything about the preceding months? A. No, I think through the months of August and September it was trucked in.

Q. I think the record on the last hearing showed that there was one distributor up there that used the railroad company for shipping gasoline and fuel oil. I am not sure, but that is my recollection. A. I know they are not very frequent shipments by rail, but occasionally you will see one hooked up to the tanks and pumping it.

Q. Now, so far as sugar beets were concerned, have if raised sugar beets, practically all of the Valier irrigation project is east of Conrad, east and north and south of course from Valier, there is a very limited acreage under the Valier project that is west of Valier, isn't that true? A. That's so.

Q. I don't know the acreage, but I would imagine under 5,000 irrigated acres west of Valier? A. Well, I wouldn't know exactly, but I know the small part of it is at that end.

Q. It might be as high as 10,000, but any sugar beets that would be raised would be raised on the irrigated land? A. Yes, up in that country.

Q. Well, in any country? A. Well, any place in this country, so far as I know.

Q. Well, they don't raise sugar beets anywhere on dry land, do they? Well, I think in the Red River Valley they raise sugar beets on dry land successfully.

Q. As I understand, in Montana sugar beets require irrigation? A. They require irrigation, yes.

Q. And the project extends from probably 5 or 10 miles west of Valier to about 10 miles east of Conrad, is that right?

A. I think that's correct.

Q. The Pondera valley and Conrad, east of Conrad, is the irrigated section? A. Yes.

Q. And the bulk of the irrigated land is from Valier east and down north and south, and in the Pondera valley east of Conrad? A. Yes.

Q. Probably 75 to 90% of it? A. That's right.

Q. And even under present conditions anybody shipping sugar beets say from the Valier project, if they were closer to Conrad than Valier, naturally would haul to Conrad? A. Well, naturally they are going to haul the shortest distance, because it is a bulky load.

Q. Well, it is the shortest distance, and on top of that they would probably save some money in the freight haul which they would have to pay the Montana Western? A. No, the beets on the project, whether they are grown at Valier or Conrad are shipped at the same price per ton.

Q. And the sugar beet company— A. They have an arrangement with the Great Northern for the shipping of the beets down



there, the cost of those beets is then reduced to a ton basis and charged against the beets over the whole system.

1044 Q. So it would simply be a question then of saving transportation? A. Personal transportation, yes.

Q. That is what I mean, transporting the beets? A. That's right.

Q. And one of the problems in connection with the sugar beet industry in the past has been the labor problem? A. Definitely.

Q. And possibly that may be changed by the use of machinery, is that right? A. Oh, it's already showing signs of a transformation.

Q. You think there is a necessity of growing root crops like sugar beets or something to restore the fertility of the soil, is that it? A. I definitely feel that way.

Q. The fertility of the soil after having been used for grain crops for 20 or 25 years naturally declines, accordingly you can't expect the yield per acre? A. That's right.

Q. On irrigated land? A. Yes sir.

Q. And on the dry land there is not very much of any other crop except the grain crop, is that true? A. Yes sir.

1045 Q. And there is a lot of grain that comes off dry ground in addition to the irrigated land? A. Yes, there is.

Q. It runs into a goodly comparison on dry land? A. Yes.

Q. The country around Valier is a very productive dry land country, isn't it? A. Yes, it is.

Q. That country between Valier and Williams is probably as good as any dry land country in Montana? A. Yes, it is.

Exam. Witters: Pardon the interruption. Is any grain grown on irrigated land? A. Oh, yes.

Q. (By Mr. Jardine:) I don't know, but I would imagine 50% or more of the grain comes from irrigated land. That may be too high, but there is a goodly portion of the grain that comes from irrigated land, is that right, Wallace? A. Well, I wouldn't know what the exact percentage was, but I do know that through the war years when the labor was tough to get and the production of hays and the production of beets had declined, that the only products that were produced on that irrigated land were grain, so that the sum total must have been very sizable.

Q. Well, I think the record shows the highest beet acre-  
1046 age planted on the whole project in any one year, I don't recall what it is but I recall it was something like 3800 acres. Anyway the record shows it. A. Mr. Scalley of the U. and I. Sugar Company could probably testify to that.

Q. Now, with reference to the shipments out of Valier in the year 1949, there has been a goodly percentage of the 1948 crop shipped this year, isn't that true, Wallace? A. Oh, I don't question in the least that some of this is carryover grain from the past crop season.

Q. And some of it as far back as 1947, do you know that? A. It could be, yes.

Q. So the shipments of grain up to date in 1949 probably represent to some extent an abnormal situation? A. No, I don't think you are absolutely right there, because the 1949 crop is going into storage rather than the 1948 crop, so that you are only replacing the grains grown in 1948 and shipped in '49, you are merely replacing those with the crop grown in the year '49.

Q. And you think that that is a representative figure then? A. I am inclined to think so, for the simple reason that under the Commodity Credit Corporation's rulings a person doesn't need to borrow on the 1949 crop or determine what they intend to do with that crop until the 30th of January, 1949.

Q. Now, do you reasonably expect that the following two 1047 months, that is this month and the month of November—you don't have any figures for that? A. I supplied figures for the month of November, Mr. Jardine, but there are only so few days that the train has operated in the month of December that I didn't think it was worth while.

Q. Well, I think you had for the month of November 41 cars of grain? A. 45, I have.

Q. I could be wrong if it was 45. That is quite a reduction from the 220 cars in September that were shipped? A. Oh, yes.

Q. And how do you account for that? A. Well, that is what I assume to be a reflection of the 1949 crop being stored on the farm again. Your figures during the months of August and September reflect the shipping of pastgrown grains, maybe, as you stated, some from '47, and certainly those from '48. They were simply clearing their granaries so that the 1949 crop could be stored again on the farm.

Q. Now, with reference to the previous hearing, the testimony showed I think that including the interest, \$9900 a year, it would take 2.9c per cwt. to pay the operating deficit and the interest on the bonded indebtedness, is that correct? A. Yes sir, that's right.

Q. Wallace, that figure, insofar as it referred only to outgoing grain, I believe was corrected as 2.3c per cwt. if it was 1048 reduced to only outgoing grain? I think I can show it to you in the record if you would like to see it. A. The record

of course would show that, and it could be that the 2.9c was for all shipments rather than just grain shipments.

Q. Now, when they figured this 2.9c or 2.3c, they took into consideration the average cost of operation, I believe, from the year 1933 to the year 1948, did they not? A. Yes.

Q. And the average income during that same period of time? A. Yes. It wouldn't be right to take any other averages.

Q. And actually, when you take the average cost of operation, the cost of operation of the Montana Western Railway Company has increased very materially from the year 1933 to the year 1949, has it not? A. Well, yes, I would definitely say that the costs had increased.

Q. And in projecting what this company would need in the future you would have to take into consideration, if you were trying to arrive at a figure that would pay them enough to pay their cost of operation and the interest on the bonded indebtedness you would have to take into consideration the actual cost of operation at the present time, wouldn't you, rather than taking the average of 15 years in the past, if you were trying to arrive at a realistic figure? A. Yes. I don't imagine that the year 1933 would have any bearing on the 1949, but at the hearing held in July they were working on averages.

Q. I understand that, but I am not asking you about how they arrived at it, I am simply trying to say, to get a realistic figure on your submission of figures, if you were figuring the cost of operation you would have to figure the costs at the present time?

Mr. Loble: No, we would figure it over a period of years, the percentage over the last 15 years, bad years and good years, you see. How is anybody going to say—

Mr. Jardine: Well, costs, particularly labor costs, have been going up in the last 15 years.

Q. (By Mr. Jardine:) Have you seen the costs of labor go down in the last 15 years, Wallace? A. No.

Q. Do you expect them to go down in the future? A. Well, I don't think they are going to be able to hold at the present peak if the prices that the farmers get for their products decrease.

Q. Would you figure that the costs of your operations were going to go down? A. I think you could anticipate some reduction, yes.

Q. You wouldn't anticipate that the next 15 years would produce the same average that the years from '33 to '48 produced, would you? A. No, I don't think the United States is retrograding in that direction. Though it might not maintain its peak it doesn't go down to the lowest level either. It will seek a happy medium in there some place or other. In other words, this country was built up on dollar-a-day wages, but you can't hire



anybody for \$1.00 today. It went up to \$2.00 and it fell back to \$1.50, until today the cheapest man you can hire is \$5.00 a day.

Q. Well, Wallace, when you start figuring that you have also got to take into consideration the size of the national debt and how far back you can take things.

Mr. Loble: I object to that. A. If I stay up here much longer I will be a walking encyclopaedia of some kind.

Q. (By Mr. Jardine:) Well, at any rate, you think there might be some reduction in the cost of operations in the next few years?

A. I definitely do. I don't see how we can stay where we are at and continue.

Exam. Witters: You mean the cost of operation of railroads?

The Witness: I do, because on railroads that is a different problem entirely. Railroads are seeing the buses and other lines of transportation taking their passenger business away from them until it is almost to the point now where they will have to be subsidized if they continue to maintain passenger service. So 1051, that I can't answer all the questions for the railroads.

Exam. Witters: Well, that is what we have in issue here, a railroad.

The Witness: I realize that, and with the unions controlling labor it is certainly going to be pretty difficult to get a lowering of the wages to their employees.

Q. (By Mr. Jardine:) Well, a large part of their costs of operation are involved in labor? A. Definitely.

Q. Labor is involved in everything that they buy? A. Naturally.

Q. So that actually the cost of operations of a railroad, if you were projecting the costs into the future it wouldn't be very good business to figure that you were going to have very much less cost of operation in the future than you have at the present time? A. Well, of course, the trend here today has been for all unions to receive all their demands, so I suppose if the railroad goes out and wants another increase they will get it.

Mr. Jardine: I think that's all.

Q. (By Mr. Hagman:) Mr. Kingsbury, are you familiar with the fact that during and since the year the Great Northern made its distribution of grain cars in connection with the Interstate

Commerce Commission's service order No. 244? A. No, I 1052 can't say that I am.

Mr. Hagman: That's all I have to ask.

#### Redirect Examination

Q. (By Mr. Loble:) Mr. Kingsbury, the Examiner asked you about the possibility of a reduction in costs pertaining to railroads.



Now you accepted the figures of the Montana Western Railroad as embodied in their Exhibits 27 and 11, did you not? A. Yes sir.

Q. And that covers the period of 1933 to 1948, is that right? A. Yes sir.

Q. State whether or not you will agree that that period covers a wide variety of periods, peacetime, wartime— A. Depression time.

Q. Depression and high time? A. Yes sir.

Q. You no more than the rest of us can contemplate whether the next 15 years will be any different than the last 15, can you? You don't know, do you? A. No.

Q. So in arriving at your figures that you have given of the cents per cwt. needed you have the exhibit embodying the figures of this railroad, right? A. Yes sir.

Q. Now, with reference to labor, this railroad doesn't 1053 operate with its employees under a contract with a labor union, does it, as far as you know? A. I think there's only one employee perhaps that—no, I'd rather state that in another manner. All employees to the best of my knowledge working for the Montana Western work under a regular scale, railroad wages.

Q. Mr. Lots is here representing the Railroad Brotherhood, is he not, Roscoe Lots? A. Yes.

Q. And I will ask him these questions. Now these men that work on this railroad are not on the same basis as the railroad men that work for the Great Northern, are they? A. Well, do you mean by that that they are not all union men?

Q. Seniority and all the various things that go into it. A. Well, I assume that there is no seniority on the Montana Western, because it is an independent railroad by itself, and it has one engineer and one fireman, one brakeman and one conductor, I guess.

Q. It's all officers and no army, is it? A. Yes.

Q. They can work part time at something else if they want to? A. They are perfectly privileged so to do.

Q. They live in the community, this crew of four? A. Yes.

Q. And the engineer is a mechanic and everything else, 1054 isn't he? A. He is.

Q. Now, just one other question about the economy there. Mr. Jardine asked you if this project developed as speedily as those who founded it hoped it would. You said no, that's right? A. Yes.

Q. You said the idea was to come in here and put in an irrigation project and take whatever benefits there were and get out in a limited time. That was the original idea, wasn't it? A. I think so.

Q. This project is the most successful that you know of under the Carey Land Act, isn't it, in Montana? A. Yes. I will answer that in the affirmative.

Q. Now, the fact that the town was contemplated to be 5,000 to 10,000 by the promoters doesn't alter your testimony as to this being a growing town and a growing community, does it? A. Not in the least.

Q. The economy of Valier and Pondera County was built on two things. What were they, the two things that built it up? A. The irrigation, the soil and the railroad.

Q. And until you had those two things you didn't have the type of economy you have now, is that it? A. That is right.

Q. And is this true, that with irrigation Pondera is one of 1055 the richest counties in the State of Montana? A. I think that's right.

Q. And it is one of the most highly productive in the State of Montana? A. That is right.

Q. And what does water do to our State of Montana? A. Well, it just simply makes a desert bloom.

Q. It is commonly called the lifeblood of our state, is it not? A. Yes.

Q. And you have water there now? A. That is correct.

Q. So the County of Pondera, one of our richest counties, is built on the railroad and built on irrigation, and what, in your opinion, happens, Mr. Kingsbury, to that economy if you take out one of the props from under it and remove the railroad? A. Well, it simply falls flat.

Q. Is it the peculiar type of farming enterprises that you have engaged in there, such as grain growing and beet growing and the like, that make it essential to have rail transportation in contradistinction to truck transportation? A. Definitely.

Q. So, while in many industries and localities trucking facilities may come in and substitute for railroading, state whether 1056 or not in your opinion, with the type of economy that you have up there, that can be accomplished by such a change?

A. I think it would be to the disadvantage of the farmer if he had to depend on truck service to remove his grain, or to operate his own trucks for the removal of his products.

Q. State whether or not you are in agreement with Governor Bonner in his telegram here today that it is imperative in your opinion that an equitable solution be arrived at to retain the line? A. Yes.

Q. He goes on to say: "Loss of this direct transport system would occasion untold hardship not only to Pondera farmers and merchants but citizens of wide area who trade with them." Are you in accord with that? A. I am definitely so.

Q. The Valier Community Club is not a club that was formed for the specific purpose of entering this controversy, was it? A. It's been in existence for a number of years.

Q. And it is composed of whom? A. Farmers of the adjoining community and business men in the town of Valier.

Q. You have all types of farmers, business and professional men in it? A. That is right.

Q. Does it meet regularly? A. Every second Monday in every month.

1057 Q. And do you have committees who act on various matters? A. Yes.

Q. And there is a committee called the "Save the Tracks" Committee, is there not? A. Yes sir.

Q. And that Save the Tracks Committee relates to this proceeding, does it not? A. That is what it was created for, to undertake to keep the rails in Valier.

Q. And you are Chairman of that committee? A. Yes sir.

Mr. Loble: That's all.

Mr. Jardine: I have one further question.

Q. (By Mr. Jardine:) You would continue to operate the same as you have in the past on your ranch, wouldn't you? I mean the question of the railroad in Valier wouldn't affect your ranch? A. Mr. Jardine, speaking now not as a representative of the Valier Community Club but as a private citizen, it is to my own personal advantage to haul my grains into Pendroy rather than to haul them into Valier. I can do it on a blacktop road and I can get more money for it by shipping it out of Pendroy because of a freight differential, but when I get to Pendroy where am I?

Q. You are in Pendroy. A. That's right, and there's no  
1058 body to trade with there. I have to come back to Valier in order to do my trading. So it is to my advantage really to haul it into Valier, and that is why I am here in the interests of the citizens of Valier, to fight for the maintenance of this railroad.

Q. Well, that may be so, but I am asking you whether or not if the railroad was abandoned you would cease your farming operation. You would haul to Pendroy, would you not? A. I no doubt would have to haul to Pendroy.

Q. Would you say it would be just as convenient and cheaper to haul to Pendroy, I mean you would get a bigger price for it? A. That's right.

Q. And you are not under the Valier project? A. No, I have my own private system.

Q. You have a water right on Birch Creek, is that? A. Right.

Mr. Jardine: That's all.

(Witness excused.)

N. S. SWANSON was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name? A. N. S. Swanson.

Q. And where do you live, Mr. Swanson, please? A. Valier, Montana.

1059 Q. And what is your occupation or business? A. Banker.

Q. And what is the name of the banking institution? A. Farmers and Stockmen's Bank.

Q. And is that the only bank in Valier? A. That is the only bank in Valier.

Q. And what position do you occupy in that bank? A. President.

Q. How long has that bank been there? A. Since October, '46.

Q. That has been about three years, is that right? A. Yes, over three years.

Exam. Witters: Isn't this covered in the previous hearing?

Mr. Loble: Yes, it is. That was just a preliminary question to identify him. I am going to ask him one other question and then I am through with that.

Q. (By Mr. Loble:) What is the amount of deposits of that bank? A. \$9,306,000 resources.

Q. That bank started from scratch? A. Absolutely.

Q. And it is in a basement? A. Temporary basement location. We'll get out of the hole as soon as we complete our building.

Q. Now, do the deposits in the bank reflect the condition  
1060 of the agricultural and surrounding territory of Valier? A. Yes, banks always do.

Q. That is practically the only territory that you operate in, that is the only territory that you operate in, isn't it? A. Yes.

Q. All right. In your capacity as a banker you heretofore testified, did you not? A. Yes sir.

Q. And you are here for further cross-examination if anyone desires to cross-examine you, are you not? A. Yes sir.

Q. Now, directing your attention to the period since the hearing in July, 1949, what have you to say as to the amount of shipments that have been made over this railroad since that time as compared with any previous years? A. Why, generally I have kept track, and you want to remember that 1948 and 1949 were two sub years for Valier territory, they weren't as good as other parts, which is most unusual. There were two years that weren't as good as they should have been. Over an average of 10 to 20 years Valier has never suffered a shorter crop than other areas that are normally lower. But otherwise, if I may make another statement—



Q. Yes. A. About this average crop yield in bushels of wheat or equivalent, I maintain that along tributary to the Montana Western tracks there is an average crop production in that trade area of 1,000,000 to 1,200,000 bushels of grain.

Q. Bushels of grain? A. Yes. There is no reason in the world why, if the same equality is had, that shipment of 200,000 to 300,000 bushels every year that goes elsewhere that should come to Valier and Williams for geographical reasons and better grade of hauling by the farmers, and I don't think there is any question about it, and I think right today there is 400,000 bushels of grain in storage on the farms which will not be shipped out until 1950. And further, I think that the absolute minimum of new farm storage just built this year in our trade area is 200,000 bushels in addition to what they had before.

Q. So that there is approximately 400,000 bushels of wheat on the farms in storage now, is there not? A. Yes.

Q. And if you reduced that to carloads shipped out over the Montana Western how many carloads would you say that is approximately? A. Why, I'd rather ask some elevator man. I'd say 200 big ones.

Q. Now, in addition to the known 200 cars of grain there now to be shipped, the 1950 crop comes along, does it not? A. The 1950 crop comes along.

Q. The 1950 crop comes along, and that you say will produce along the Montana Western Railroad 1,000,000 to 1,200,000? A. Bushels.

Q. Bushels of wheat, of grain? A. From the evidence, which I assume to be correct, it is about 800,000 average, but the difference of 200,000 bushels to 400,000 bushels is shipped from other points that should be reclaimed for our trade area.

Q. The railroad is about 26 miles long, is it? A. 25 or 26.

Mr. Jardine: I think it's 21, isn't it? Doesn't the record show?

Exam. Witters: Are you including the portion of the Great Northern that they run over?

Mr. Loble: No.

Exam. Witters: Then it is not that long.

The Witness: 17 miles, I think.

Q. (By Mr. Loble:) Now as to this Valier area, do you reaffirm and corroborate what Mr. Kingsbury said in reference to this being one of the very best and richest irrigated sections of the state? A. I do. If I didn't consider it one of the best areas I should not have started the bank there.

Q. You wouldn't have started that? You are satisfied now that the bank is started, are you not? A. Oh, yes.

1063 Q. Now is there every reason to expect, based on the past

experience, that Valier and Pondera County will continue to lead in the state as agricultural communities? A. Yes, there is.

Q. The last two years, however, it so happened were dry years in your area of the state, is that right? A. Oh, dry in other areas, but particularly east of Conrad.

Q. The area competing, was this area bad? A. They got more rain than we did. It hurt us badly. It just happened to be reverse conditions.

Q. It was like Los Angeles, it was unusual? A. Yes.

Q. And do you feel, Mr. Swanson, in your opinion that it would be a calamity to this community to have this part of their economy, the railroad, withdrawn? A. Yes, I think that it definitely would. Past history has been the case. There is no proven satisfactory way of shipping grain except in a freight car for a long haul that I know of.

Q. Without going into the figures, you heard the figures that have been enumerated here. Do you corroborate Mr. Kingsbury when he testified that based on our information a cent and a half per cwt. would pay the operating deficit, average operating deficit of the Montana Western before interest? Would you say that, based on what we know about it? A. I would. I have worked on the percentages some and I would say that.

1064 Q. And that 2.9c per cwt. would pay not only the operating deficit but the interest on the bonded indebtedness? A. Yes, and with higher costs and so forth, why, I think the Montana Western through improved road bed and improved facilities they could offset part of the higher cost, because when prices go up and costs go up the only way to do is to improve the equipment to give cheaper transportation.

Q. In your opinion, Mr. Swanson, could there be curtailment of service on that road? A. Definitely.

Q. A daily passenger service is not necessary, is it? A. No, it isn't.

Q. The principal income to this railroad is from freight shipments, is it not? A. Absolutely.

Q. And could this be run on a tri-weekly basis as well as a daily basis? A. It could be run on a tri-weekly or a non-schedule basis, or anything that is limited just to grain in carload shipments, and any transportation company could get the mail contract, and deliver freight daily to Valier from Conrad and maintain a station there, they could cut the expenses in half.

Mr. Loble: That's all.

Exam. Witters: Any cross-examination?

1065 Mr. Jardine: Yes.

## Cross-Examination

Q. (By Mr. Jardine:) Mr. Swanson, you think if you were operating that railroad that you could operate it on a basis of running it tri-weekly? A. In my economic judgment of railroading I would say so.

Q. Well, you are testifying as an expert that it could be?

Mr. Loble: He didn't say he was an expert. He said in his opinion.

Q. (By Mr. Jardine:) At any rate, you think it could be run on a tri-weekly basis? A. Well, I think so.

Q. Do you think you could hire men to operate that way? A. I think a switch engine could be maintained at Conrad to do the switching for Conrad and for the oil refinery and handle us as a spur and collect the freight.

Q. Well, who do you think would run it from Conrad? A. A public utility.

Q. Well, a public utility,—do you think that the Montana Western would save any money by trying to operate that way? A. I think that the Great Northern should handle it that way.

Q. Well, I asked you if you think the Montana Western could handle it that way, operate it that way and save money. A. If the Great Northern would pay for switching and pay for the oil refinery I think you could.

1066 Q. And you think that the Montana Western, in connection with the Great Northern could operate out of Conrad and save money? A. Yes.

Q. On a tri-weekly basis? A. Yes.

Q. You think that that is possible, I mean that it would be possible to save money by that sort of an operation? A. In my opinion by curtailing service it is possible.

Q. Operating out of Conrad, is that what you mean? A. If there is other switching and so forth to use up time.

Q. Well, I know, but what you are talking about is a curtailment operation out of Conrad, isn't that true? A. Yes.

Q. Well, tell me, could the Montana Western operate out of Conrad on a foreign line? A. Well, I think the cost of operation would be a whole lot higher, from what I know about railroads.

Q. It isn't worth very much, but I do think if the Montana Western was operated out of Conrad that there would be no expense saved at all, it would cost more. A. If there was no expense saved operating out of Conrad they could operate out of Valier.

Q. Well, you think they could operate out of Valier on a tri-weekly basis? A. I think so.

1067 Q. Do you think they could hire part-time men to operate it that way? A. If they could have other employment with the water company, or if arrangements could be made whereby

the unions would give permission to alternate work between two jobs.

Q. Do you mean they could operate part of the time out of Valier and operate out of Conrad the other part of the time? A. No, operate out of Valier and have a track maintenance man as a brakeman, or something like that.

Q. Well, your cost of maintaining your track would be practically the same whether you operated every day or three days a week? A. Yes, I think it would.

Q. You have got to keep up your track in order to operate the train over it? A. You do save on fuel and other things.

Q. You'd save on fuel? A. My original statement was that it could be handled as a spur of the Great Northern.

Q. Now we have got back to Valier and you are thinking that it could be operated out of Valier? A. My original point was that it could be operated out of Conrad as a spur.

Q. You said Conrad? A. Yes.

1068 Q. And then it got back to Valier? A. You changed the subject.

Q. Well, at any rate, you think that it could be operated out of Conrad on a tri-weekly basis and save money? A. As a spur.

Q. And save money? A. Yes.

Q. And that money saved you think would be saved on fuel and a saving on employees? A. And on dividing their time between switching at times and servicing the oil refinery spur.

Q. What was that last now? A. By dividing their time between switching at times and servicing the oil refinery spur.

Q. And if they were servicing the oil refinery spur that would have to be someone working on the Great Northern Railway, wouldn't it? A. The whole thing was suggested as the Great Northern handling it as a spur.

Q. That's what I say, these employees would have to be employees of the Great Northern? A. That's right.

Q. So that would be an operation by the Great Northern? A. Yes.

Q. So far as the Montana Western operating out of Conrad is concerned, you don't think that could be done and save any money? A. I think that the whole thing could be operated by the Great Northern as a feeder line. For technical reasons it has been operated under the Montana Western name when in reality it always has been a feeder line for the Great Northern.

Q. In other words, you think that that operation would have to be a Great Northern operation no matter what you called it? A. I think it's a Great Northern operation no matter what they call it. They pay the losses.



Q. That is your opinion? A. And I don't know, it's never been shown that any of the stockholders or any of the directors or anyone in connection with the Montana Western has lost a penny in an operation of that kind.

Q. Well, I don't know, I think you are badly mistaken about that, but whether they have or not, you think that the past operation from what you say up to now has been an operation by the Great Northern Railway Company? A. Definitely.

Mr. Jardine: That's all.

Mr. Loble: That's all.

Q. (By Mr. Hagman:) I assume from your testimony, Mr. Swanson, that you have had no railroad experience? A. 1070 None whatever.

Q. And I also assume that when you are expressing an opinion as to the operations of the railroad and the relationship between the Montana Western and the Great Northern you are not basing that upon any knowledge that you have yourself? A. Just on testimony that I have heard.

Mr. Hagman: That's all.

(Witness excused.)

Exam. Witters: We will take a short recess at this time.

(Thereupon, at 2:55 p. m., the hearing recessed briefly.)

JOHN E. ROBERTS was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. John E. Roberts.

Q. You have come here for this hearing? A. Yes sir.

Q. Where do you live, Mr. Roberts? A. Valier, Montana.

Q. What is your occupation? A. Farmer.

Q. Where is your farm located? A.  $3\frac{3}{4}$  miles northwest of Valier.

Q. And you were heretofore a witness in this case? A. Yes sir.

Q. And you are here available for cross-examination or 1071 further examination? A. Yes sir.

Q. And do you reaffirm the testimony you gave that in your opinion the maintenance of this railroad is essential to Valier and the surrounding area? A. Yes.

Q. You have heard Mr. Kingsbury testify, have you? A. Yes.

Q. And without going into the figures state whether or not you agree with his testimony as to the necessity for a joint rate and a division of the proceeds so that this road may continue? A. I do.

Q. What have you to say as to what has occurred since the July

meeting or the July hearing in reference to the traffic over this railroad, the Montana Western? A. I didn't quite understand that question, Mr. Loble.

Q. I will rephrase it. We had our hearing in July this year? A. Yes.

Q. Since that time you know that this railroad has had very substantial shipments of grain? A. That's right.

Q. And have those shipments been really extraordinary, considering all things? A. No, I don't think so.

Q. I think Mr. Kingsbury testified that approximately 500 1072 cars have been shipped since August, and you have heard Mr. Swanson testify that there are some 400,000 bushels of wheat in storage on the farms? A. I believe that.

Q. In your opinion do you think that this railroad can be operated successfully with a different division of the rates to make it conform to what these two railroads have been doing anyway? A. I think so, although I want it understood I am no railroad expert.

Q. Well, neither is Mr. Young, and he testified about it. You heard Mr. Young's figures on the rehabilitation plan that he testified about in the previous hearing, you heard that, did you not? A. Oh, yes.

Q. And do you know that in the year 1948 there was considerable work done on the railroad? A. Yes.

Q. State whether or not you are in agreement with the proposition, Mr. Roberts, that the economy of Valier and Pondera County was built on the water company and the railroad, are you in agreement with that? A. I am in agreement with that.

Q. And Valier having been built on that basis, to withdraw the railroad from operation, what does that do to the economy 1073 there? A. It about ruins it.

Q. Is the particular type of farming activity that has been built up as a result of the promotion by the Great Northern and the predecessors of the Valier Company such that it must be served by railroad?

Mr. Hagman: I object to the question as being leading, particularly the part referring to promotion by the Great Northern. I have no objection to counsel asking the witness a question but I object to his putting words in the witnesses's mouth.

Mr. Loble: We heard that in the previous hearing.

Mr. Hagman: I object to that, whether he heard it in the previous hearing or not. He is here to tell what he knows himself.

Q. (By Mr. Loble:) Were you present at the previous hearing? A. I was.

Q. And where did most of the people come from who live in Valier and who built up that community? A. From midwestern states, eastern states.

Q. Is that where you came from? A. Yes.

Q. Whereabouts? A. Missouri.

Q. And do you know that the country of Valier and this area was built up by the promotion of the Great Northern and  
1074 the publication in the newspapers of homeseekers' rates and all the other advantages of coming to Valier and building up the community, together with all the other agencies in Valier?

Mr. Hagman: I object to the question as leading. Ask him who promoted it, don't tell him.

Mr. Loble: He'd rather hear from you than he would from me, so will you tell us how this country happened to be built up, by whose instigation, do you know? A. I first saw the advertisements in 1917 of the Great Northern Railroad and of the Valier Company. I don't remember just exactly what the name of that Valier Company was at that time, however.

Mr. Jardine: Valier Farm Sales Company?

The Witness: Yes. I saw that advertisement in 1917.

Q. (By Mr. Loble:) Did that have anything to do with your coming here? A. Yes.

Q. Do you remember what those advertisements were about? A. Well, they advertised the land and the railroad into Valier and all the advantages.

Mr. Hagman: Who is "they."

The Witness: The Great Northern. It had folders in, I believe.

Isn't that of record in our other hearing? Wasn't that an—  
1075 Mr. Loble: Yes, an exhibit in there.

Exam. Witters: Yes.

Q. (By Mr. Loble:) Is it a fact that the Great Northern advertised that there was a railroad there or to be put there as an inducement to come there?

Mr. Hagman: Objected to as leading. There is no evidence that the Great Northern so advertised.

Mr. Loble: Certainly it is of record. Isn't it, Mr. Examiner? It was in the record of the hearing of July 9, 10 and 11, I believe.

Mr. Jardine: Well, the exhibits are here. It would be in the record.

Mr. Hagman: Well, if it is in record that is all that is necessary.

Mr. Jardine: I know that the Great Northern were advertising for people to come to Montana, but whether they designated any particular place I don't know.

Mr. Loble: Yes, they did. The Great Northern had a picture of a goat, and the words, "Come to Valier, Montana."

Mr. Hagman: The allegation of your complaint states that all of this advertising was true.

Mr. Loble: That it was good country.

Mr. Hagman: That it was true.

Mr. Loble: Of course it was true.

Mr. Hagman: Well then, what's the point of all this?

1076 Mr. Loble: There's a lot of point to it. You can't walk out on them and leave them after getting them out here.

Mr. Hagman: Who's trying to walk out on them?

Q. (By Mr. Loble:) I believe you said that the fact that there was known to you to be a railroad there was an inducement to you to come? A. That's right.

Q. And you have been there ever since, have you not? A. Yes.

Q. And you are glad you came? A. I am.

Q. Raised your family there? A. Yes.

Q. And you have been successful there, haven't you? Moderately-so? A. I guess you could call it so.

Q. Do you believe that you and your family can continue to be moderately successful if they will permit that railroad to remain?

A. Certainly.

Mr. Loble: Cross-examine.

#### Cross-Examination

Q. (By Mr. Jardine:) Mr. Roberts, are you a director or anything in the Farmers Union elevator there? A. Yes, I am.

1077 Q. The one that burned down? A. Yes.

Q. Can you tell us how many tons of grain were in there, or do you know? A. I am not acquainted with tons.

Q. Or bushels? A. I think it was approximately between 30,000 and 35,000 bushels.

Exam. Witters: Was that a total loss?

The Witness: Sir?

Exam. Witters: Was that fire a total loss?

The Witness: Yes. Well, there was some salvage, I guess, from the burned grain, I don't know what that was. That was turned over to the insurance company, of course. They handled it.

Exam. Witters: The elevator was a total loss, was it?

The Witness: That's right.

Q. (By Mr. Jardine:) And the territory around Valier is a highly developed both irrigated and dry land country, is it not?

A. Yes.

Q. Do you operate any irrigated land? A. Yes.

Q. And you also operate dry land? A. Yes.



Q. And on both of them you raise grain crops? A. Yes.

1078 Mr. Jardine: I think that's all.

Mr. Loble: That's all.

Mr. Hagman: No questions.

Exam. Witters: Most of this seems to be accumulative.

Mr. Loble: Yes, it is, but these people have come a long way here. We would like to have time to hear them. It is important to them.

(Witness excused.)

HUGO SWANSON was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:), State your name, please? A. Hugo Swanson.

Q. You live where? A. Oh, about one mile east and  $3\frac{3}{4}$  miles north of Valier.

Q. And how long have you lived in Valier? A. Since 1914.

Q. And you came from where to Valier? A. Nebraska.

Q. Were you one of those who became interested by reason of advertisements? A. Well, not originally. Oscar Peterson and I, we came on an excursion ticket on the Milwaukee as far as Lewistown, and on the train we got folders advertising the Valier  
1079 country, and that's how we happened, we originally didn't intend to come to Valier, but on the train the Great Northern development agent had those folders, on the Milwaukee train, and we got interested in this Valier country.

Q. And you came to Valier? A. Yes.

Q. And you've been there ever since? A. Yes.

Q. And your sons are there? A. Yes, they are.

Q. You are engaged in wheat growing? A. Yes. I am not a large operator as operators go, just—

Q. About how many acres? A. Oh, myself, I only operate about 640 acres.

Q. And your sons operate more, do they? A. Oh, yes, they altogether, I've got three sons there, altogether they probably operate around a thousand acres, something like that. I'd have to stop and really figure it.

Q. Yes. It's good country, isn't it? A. Well, that's why we stayed there.

Q. State whether or not, Mr. Swanson, the railroad and the water company together are the two important things in that country, is that right? A. Well, I think they go hand in hand.

Q. And in your opinion, if the railroad was taken out of 1080 there, what would be the effect on that country? A. Well, it certainly would be a detriment to it.

Q. Now, this year have you known that there have been quite a few shipments during the past few months over this railroad? A. Yes, I think that was a little abnormal for those two months.

Mr. Hagman: What do you mean by abnormal, do you mean more or less?

The Witness: Well, I think it was a little more than ordinarily for them two months, and I'd like to state the reason why.

Q. (By Mr. Loble:) All right, go ahead. What was the reason? A. There was a shortage of cars for a good long while, and there was at least, I'm sure, 50,000 bushels or more that went to other towns that would have been marketed at Valier. I myself hauled 2,000 bushels of barley to Shelby because I couldn't be assured of getting it into the Valier elevators before the 1949-crop would be harvested, so I hauled it about 30 miles just to have my bins empty for the '49 crop.

Mr. Loble: All right. Thank you.

#### Cross-Examination

Q. (By Mr. Jardine:) Mr. Swanson, you figure there was 50,000 bushels that was hauled that otherwise would have gone over the Montana Western? A. Now this is not my own figures. Now Mr.

1081 Kibbee of the Cargills elevator at Valier stated to me that he was sure that he lost that much himself.

Q. So you think that there would be quite a lot in excess of 50,000 bushels of grain hauled out of that country to Conrad or Shelby or some other place? A. Yes.

Q. I don't suppose you know too much about the country north of Great Falls and east of Brady, the Goose Hill country. Have you ever been through that country? A. Just a few days ago. I went through that country on my way to Great Falls. I went through that territory for the first time since I have been here.

Q. There's a lot of grain raised in that country? A. Yes. They are a long ways from the railroad.

Q. Yes, they haul that grain to a railroad 30 or 35 miles? A. Well, I wouldn't know exactly what distance they are.

(Discussion outside of the record.)

Q. And, Hugo, you did haul your barley to Shelby? A. Yes, I did.

Q. Probably about 30 to 35 miles? A. Well, right close to 30 miles.

Q. I think they figure from Valier to Shelby is about 31 miles. A. Well, I didn't go around by Valier.

Q. You didn't go around by Valier? A. No.

Q. Oh, you went south, I suppose, from your farm to the 1082 highway? A. No, I went east, through the Bullhead country.

Q. So your probable distance was between 25 and 30 miles? A. Well, I think from my place to the town of Shelby is about 28 miles, and I hauled it out east of the town of Shelby there about a mile or a mile and a half, so it would leave it right close to 30 miles.

Q. That is what I thought, between 25 and 30 miles? A. Yes.

Mr. Jardine: I think that's all.

Mr. Loble: That's all.

Mr. Hagman: No questions.

(Witness excused)

EUGENE EGAN was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. Eugene Egan.

Q. Where do you live, Mr. Egan? A. 5 miles east and a quarter of a mile north of Valier.

Q. Engaged in what business? A. Farming.

Q. And how extensively? A. 880 acres.

Q. What type of commodity? A. It is dry and irrigated, 1083 if that is what you mean.

Q. What do you grow principally? A. Principally now it's hay, alfalfa, wheat and barley.

Q. State whether or not you were raised in that country, Mr. Egan? A. No, I wasn't.

Q. How long have you been there? A. I have been there since '29.

Q. What, if any, official position do you occupy in connection with the Valier Community Club? A. I am President of the Community Club.

Q. You attended the former hearing in July, did you? A. Yes.

Q. And do you reaffirm what you said there? A. Yes sir.

Q. As to it being essential that this railroad continue to operate? A. Yes sir.

Q. Were your folks there before you in the country? A. No, my folks were in the Flathead in Montana.

Q. Have you observed since our hearing in July shipments over the Montana Western, have you observed that? A. I haven't observed it. I know that there must have been a great deal, because all of the elevators that were filled at the time of the hearing

are now, I wouldn't say they are empty, but you can haul  
1084 grain in there and dispose of it.

Q. Do you corroborate what has been said by the other witnesses like Mr. Swanson, who was just on the stand, with reference to what has occurred in moving grain that couldn't be moved before by reason of no cars? A. Yes, I do. I don't think it was abnormal though. If that grain could have been moved regularly all during the year it wouldn't have been abnormal. I think it would be less than normal, because, as it was testified here, some of that grain was hauled by truck to other places so the fellows could empty their grain bins. So I don't think it was abnormal at all.

Q. As a matter of practice, when a grain farmer harvests his crop, he has so much storage on his farm, does he not? A. Yes.

Q. Then he hauls it to the elevator? A. Yes.

Q. And when the elevator is filled and his storage is filled, what does he have to do? A. He piles it on the ground on his farm.

Q. Or he must seek some other elevator in some other town? A. That's right, if he has time to haul it. He has to pile it on the ground at harvesting time because he hasn't time to haul it.

Q. Did a good deal of that occur during this past year?  
1085 A. No, not this past year.

Q. The year before that? A. The year before that.

Q. I believe you are a beet raiser too, are you not? A. Yes sir, I have been in the past. I haven't been for the past three or four years.

Q. You have heard Mr. Kingsbury testify that the beet growing declined during the war? A. I raised beets all during the war.

Q. You had considerable difficulty getting labor, did you? A. Yes sir. That's why we stopped raising them.

Q. Do you concur in Mr. Kingsbury's view that beets are a good crop for that country? A. Yes, I think they are a good crop for that country.

Q. And do you intend to go back into that? A. Yes sir.

Mr. Loble: I think that's all.

Mr. Jardine: I have no cross-examination.

Mr. Hagman: No questions.

(Witness excused.)

H. J. HEYEN was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) Your name is H. J. Heyen, is it?

1086 A. That's correct.

Q. You live near Valier? A. Yes,  $4\frac{1}{2}$  miles east.

Q. And what business are you engaged in? A. Farming.



Q. And on what scale, how extensively? A. Oh, about 1200 acres.

Q. And your crop is what, generally? A. Oh, wheat, barley and alfalfa hay, some livestock.

Q. How long have you been in that country? A. 20 years.

Q. Where did you come from originally? A. Wisconsin.

Q. Were you on that Milwaukee train with Mr. Swanson? A. I didn't hear it, I guess. I just came in a while ago.

Q. Were you induced to come out here by reason of propaganda you read? A. Well, partly, yes, and mostly, I came out one time on the Northern Pacific looking around. When I got back to St. Paul I went to Mr. Leedy, who was the immigration agent on the Great Northern at that time and I met Mr. Wayman there, and Wayman was immigration agent for this Valier project and the Great Northern too.

Q. The Great Northern had an immigration agent in those days? Mr. Hagman: He didn't say they did.

Mr. Loble: Is there anything so awful about that?

1087 Mr. Hagman: He referred to Mr. Wayman, and he referred to him, as I understand it, not as the Great Northern agent, but the way you restate it is not correct.

The Witness: Well, the way I understood it he worked partly for the Great Northern and partly for the Valier project, so I don't think that he worked anywhere else.

Q. (By Mr. Loble:) I understood you to say that he was the immigration agent? A. He had a pass. He rode the railroad.

Q. Did he contact you on the railroad? A. He came up to see me, that is where I live, and he figured I was all right, so I came up here and looked around.

Mr. Hagman: You came on the Great Northern that time?

The Witness: Yes, part way. A little ways on the Soo line and partly on the Northern Pacific, and the rest of the way on the Great Northern.

Q. (By Mr. Loble:) And you have been there ever since, have you not? A. Yes, right in that same place.

Q. You just came in? A. I came in about 15 minutes ago.

Q. What you testified before in the previous hearing you reaffirm here today? A. In that hearing in Valier?

1088 Q. Yes. A. Yes.

Q. Do you feel, Mr. Heyen, that it is essential to Valier and that country up there to maintain its railroad? A. I wouldn't want to locate 25 or 30 miles from a railroad. It would be kind of silly.

Q. You have been in the sugar beet industry? A. Oh, yes.

Q. It was a profitable business, was it? A. It was up to the time my labor problem got to be just too difficult to solve. During the war most of us found it that way.

Q. You expect to go back into it when things get normal again? A. I think so. I have been thinking about it every year.

Q. The beet crop goes to Chinook, Montana? A. Yes.

Q. And the tops are shipped back to you? A. No, the tops we keep.

Q. And they are as valuable as alfalfa for fattening livestock? A. Oh, they are very good feed, for fattening of livestock.

Q. You wouldn't expect to grow that crop to ship other than by rail to any advantage? A. No, that would be one crop you couldn't do anything with without having a railroad.

Mr. Loble: That's all.

Mr. Jardine: I have just one question.

1089

## Cross-Examination

Q. (By Mr. Jardine:) You have to have a railroad, you figure? A. Oh, I don't think you would want to haul over 8 or 10 miles. Most of the people that tried to grow them farther away than that kind of fell out and quit pretty quick.

Mr. Jardine: That's all.

(Witnessed excused.)

TED R. CRAWFORD was sworn and testified as follows:

## Direct Examination

Q. (By Mr. Loble:) State your name, please? A. Ted R. Crawford.

Q. And you live where? A. 3 miles east of Valier.

Q. And what business are you engaged in? A. Ranching.

Q. And on what scale? A. My sons and I operate about 3,000 acres.

Q. And what type of product do you raise? A. Wheat and barley at the present time.

Q. And do you ship over the Montana Western? A. Yes sir, I do.

Q. State whether or not you were a witness before in the other hearing? A. I was.

1090 Q. And do you reaffirm what you testified to before? A. I do.

Q. In your opinion is the maintenance of this Montana Western Railroad essential to the economy of Valier and Pondera County? A. I think it is very much.

Q. Do you think that a country that was built up around a railroad and a water company can afford to lose either one of them?

A. No, I believe not.

Q. Has this area in which you live and which you have been in for many years developed into a very fine agricultural area? A. It has.

Q. How long have you lived in that area? A. I came there in the fall of '17.

Q. Has there been considerable growth in Pondera County, both in financial stability and in people that have moved in there over the years since you first started? A. Yes, there has.

Q. There has been some change, has there not, in the picture of farming? A. Yes sir. Wheat farms, dry land wheat farms has got larger.

Q. And machinery has come into play, has it not? A. Modern machinery is the cause of it.

Q. Have you observed the shipments the last few months out of Valier? A. Well, I would say that the shipment was above 1091 normal for the present month, but for the year I wouldn't say so, because of the impossibility of getting cars.

Q. Was '47 a difficult year to get cars? A. We have had difficulty for 3 or 4 years.

Q. Mr. Hagman referred to some order of the I. C. C. in reference to cars, but whatever the reason was you didn't get them, did you? A. I think probably these Great Northern men are probably fair in their statements. I don't think that the head men of the Great Northern knew that we had a car shortage. When it was called to the attention of the Great Northern along in August it was cleared up. I think our car shortage was between Conrad and Great Falls, and I think that probably the men in Minneapolis didn't know that we had a car shortage. Maybe they should have but I don't think they did.

Q. And when was the car shortage remedied, this year? A. It was remedied this year.

Q. At the time of the hearing in July you were having a bad time of it, weren't you? A. We had no cars at all.

Q. And is it possible to estimate the number of bushels that went elsewhere because there weren't any cars, is it possible to give an estimate on that? A. Well, my estimate on that is much higher than any of these other men that have testified.

1092 Q. About what would you estimate it to be? A. Well, I think it would probably run 75,000 or 80,000 bushels.

Mr. Hagman: During what period?

The Witness: Well, mostly the period of the last two years.

Mr. Loble: That's all.

## Cross-Examination

Q. (By Mr. Jardine:) And you feel that the overcoming of the shortage of cars along in August and later this year was due to the fact that somebody got in touch with the Great Northern officials for you? A. Yes. Mr. Atwood and the banker at Valier and the banker at Conrad is the three men I believe that remedied that situation for us.

Mr. Jardine: I think that's all.

(Witness excused.)

BLAINE FERGUSON was sworn and testified as follows:

## Direct Examination

Q. (By Mr. Loble:) Your name, please? A. Blaine Ferguson.

Q. And where do you live, Mr. Ferguson? A. I live in Valier.

Q. And how long have you lived there? A. Since 1927.

1093 Q. And what business are you following? A. I am a farmer.

Q. And where is your farm located? A. I have a farm about 6 miles north of Valier.

Q. And what is the approximate amount of acreage that you and those connected with you operate? A. My son and I operate 2200 acres.

Q. What type of farming do you do? A. It is wheat and barley mostly now.

Q. Do you use the Montana Western Railroad? A. Absolutely, when we can.

Q. That is when the cars are there? A. That's right.

Q. And do you corroborate what Mr. Crawford just said that many people had to go elsewhere because there weren't any cars available? A. I hauled 7,000 bushels myself into Shelby in July of this year because I couldn't get cars.

Q. Why did you do that? A. Because I couldn't get any cars and I had to empty my bins for the 1949 crop. I don't want to do that any more. That was hard, that was difficult hauling, and I broke a truck down and I had a lot of trouble, and I don't like to haul grain that far.

1094 Q. When the Commodity Credit Corporation issues its certain orders then you all have to start shipping, don't you?

A. Well, we have to start to ship or have reason for not doing so. They never pushed the delivery of this grain, but they said, "Now is the time you can haul your grain," and if you don't get it in then you have got to hold it over until you can get it in. By that time the 1949 crop would have been in our barnyards without any cover over it.



Q. Then if it is there without any cover over it you have a different situation about getting a loan on it, don't you? A. That's right.

Q. You can't get it, can you? A. That's right.

Q. So, in your opinion, Mr. Ferguson, state whether or not it is essential that this railroad be maintained? A. I think it is absolutely essential that the railroad to Valier be maintained. I don't see how the Valier Company, owning as much land as they do, can afford to take it out, and I know that I could afford to pay a little extra to have it hauled if it was absolutely necessary. It is essential to me to have this railroad to make the heavy hauls.

Q. Of course, the Valier Company, they have considerable acreage there of their own, haven't they? A. They have, yes.

Q. But, with their connection with Cargills and Company 1095 and the trucking facilities of Cargills and Company to ship by, they might be in a little better position than you would be. You wouldn't know about that, would you? A. Well, I worked for them for 20 years as their farm manager for their acreage, and I wouldn't say that they had any advantage over the other people that they are going to add a detriment. But there is no doubt about that on the hauling end of it, there is no doubt but what they will be cut in price on their grain if they have to haul it that far with trucks.

Q. You were their representative for 20 years, then I assume you know how essential to that country the water supply and the railroad are? A. Well, I should know, yes. I was their farm manager for 20 years.

Q. It would be a totally different country if you didn't have water, wouldn't it? A. Absolutely.

Q. And the economy and everything else would be just a different situation? A. It would be a different setup. It would be a dry land country, like our friend said it was between Brady and Fort Benton. Over in that country they have a few good years like they have had in the last five years, and then they have a drouth. That country east from Conrad to Big Sandy was sold for taxes 1096 since I have been in the country.

Q. That is the difference between dry and and irrigated land? A. That's right.

Mr. Loble: I think you may examine.

#### Cross-Examination

Q. (By Mr. Jardine:) In the last 7 or 8 years most of those fellows in that dry land country have ended up with \$200,000 to \$500,000? A. That's right.

Q. Fortunately those fellows who bought land for maybe \$1.00 an acre, they can sell it for \$75.00 an acre now, or maybe more?

A. That's right.

Q. Not only that, but those fellows out in that country, most of them are worth anywhere from \$50,000 to half a million dollars?

A. A whole lot of them, yes.

Mr. Jardine: That's all.

(Witness excused.)

THOMAS A. CAVERLY was sworn and testified as follows:

### Direct Examination

Q. (By Mr. Loble:) Will you state your name, please? A. Thomas A. Caverly.

Q. You were not a witness at the last hearing, were you? A. No sir.

1097 Q. You live in Valier? A. Yes sir.

Q. What is your occupation? A. I am an editor and printer.

Q. What is the name of your paper? A. The Valerian.

Q. That is a weekly paper? A. Yes sir.

Q. And carries County printing and other printing? A. That's right.

Q. How long have you lived in that community? A. I have been there 3 years.

Q. From your observation as a publisher and editor there, a printer, do you come in contact with general conditions? A. Yes sir.

Q. And what would you say as to it being necessary and in the public interest that the Montana Western Railroad be maintained? A. I think it is absolutely necessary.

Q. What would you say as to the necessity of the Montana Western and the Great Northern Railway working out some system under supervision of the Interstate Commerce Commission whereby they could have a division of their income sufficient to operate this railroad as it has been operated in the past? A. I think in some way it could be worked out to the advantage of everyone.

1098 Q. You heard some of the testimony at the previous hearing, did you not? A. Yes sir.

Q. And state whether or not you are generally familiar with the fact that the Montana Western Railroad has been operated in past years, let us say, under the wing of the Great Northern? A. Yes, I assume that from the testimony given before.

Q. And do you feel, Mr. Caverly, that if this railroad is abandoned it would be disastrous not only to the Town of Valier but to Pondera County? A. I believe it would.

Mr. Loble: That's all.

Mr. Jardine: No cross-examination.

(Witness excused.)

LEO WOLLAM was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) State your name, please. A. Leo Wollam.

Q. You reside where? A. In Great Falls, at present.

Q. And what is your occupation? A. International Elevator Company, grain and chemicals.

Q. Do you have elevators at Williams? A. Yes, we have two there.

1099 Q. Is that on the Montana Western? - A. Yes.

Q. What capacity elevators do you have there? A. Well, there's approximately 80,000 storage capacity there now, I believe.

Q. What have you to say, Mr. Wollam, as to it being essential that this railroad continue its operation in order that you can continue the operation of your elevators? A. Well, I don't know to my knowledge of any elevators operating where there is not a railroad.

Q. And do you think it would seriously affect the community there and the economy of the community if this railroad was taken out? A. Yes, I do.

Q. This country was built up on the railroad and the water company, was it not? A. Yes, that's about it.

Q. Would it be more disastrous to take out a railroad in a community where it has been built up by reason of the railroad being there than to take one out where it was built up on other facilities? A. Well, I would say it would be more disastrous to take it out after it being built around the railroad. The elevators built there have been built more or less projected on having a means of getting stuff out.

1100 Mr. Loble: O.K. Thank you.

#### Cross-Examination

Q. (By Mr. Jardine:) Don't you think there would be dry land farming up in that country if there were no railroad or irrigation system? A. Well, yes, I suppose there would be.

Q. That country is adapted to dry land farming, isn't it? A. It's a good farming country, but, as far as I know no one has threatened to take out the irrigation system.

Q. There is no threat of that kind at present? A. No.

Q. Without either the irrigation system or the railroad, that country is adapted to dry land farming, and naturally would be in dry land farming, would it not? A. Oh, yes.

Q. Do you have any elevators located in the Goose Hill area?

A. We have elevators at Chester and also in Big Sandy.

Q. And are you familiar with the territory east of Brady and north of Great Falls? A. To a certain extent.

Q. You have been through it? A. Yes.

Q. Are you familiar with the fact that they haul the wheat in there 20 to 30 miles to the elevator at Brady? A. They haul quite a ways, I wouldn't go on record as to how far they do haul  
1101 exactly.

Q. Have you been through it? A. Yes.

Q. You never took the mileage off? A. I never took any definite mileage at any point. In the middle there I would say they were 20 to 25 miles from one of the surrounding towns.

Q. There is a road that runs north of Great Falls that was well known in the old days as a bootlegger's trail. You have been over that road? A. Yes.

Q. And there is a road that runs east from Brady out there? A. Yes, and that continues on to Portage and Flowery and some of those places.

Q. That country where those roads intersect is over 20 miles north of Great Falls, isn't it? A. Yes, it probably is.

Q. And it is probably over 20 miles east of Brady? A. Yes, but when you get that far east of Brady you are getting closer to our other outlets there.

Q. You are getting closer to Flowery? A. Yes, Flowery and Portage and Fort Benton.

Q. How far is that? A. Well, from that particular intersection, now this is not absolutely definite, I would say it is prob-  
1102 ably, from the point where those roads intersect it is probably 16 or 17 miles to Fort Benton and 20 to 22 miles to Flowery, and a little farther to Portage.

Q. And that country is a grain country? A. Yes.

Q. They raise wheat, I mean, about the same crops they raise up at Valier, maybe not in the same amount? A. Yes.

Mr. Jardine: That's all.

Mr. Loble: That's all.

(Witness excused.)



PAUL ENTORF, was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) Give the reporter your name, please. A. Paul Entorf.

Q. Your residence is Valier? A. It is.

Q. What is your occupation? A. Elevator manager.

Q. Is that the Farmers Union Elevator? A. That is.

Q. And that is the one that burned down recently? A. That's right.

Q. Now, Mr. Entorf, you have lived there about how long?  
1103 A. 3 years.

Q. What have you to say as to the public convenience and necessity requiring the maintenance of this railroad, the Montana Western Railroad? A. I think that the railroad facilities in Valier are as essential as the Great Northern is to St. Paul.

Q. Well, that's pretty essential, I imagine. A. I think so.

Q. Has your business been built entirely around the railroad facilities? A. It has.

Q. Whatever you testified to at the previous hearing, do you reaffirm today? A. I do.

Q. Have you observed since our last hearing the shipment of grain? A. I have.

Q. And has that been substantial? A. It has.

Q. Do you know that the farmers in that vicinity are anxious to ship over the Montana Western? A. It is the handiest place for them.

Q. The occasions when they leave there and go elsewhere with their grain are due to what? A. The shortage of railroad  
1104 facilities.

Q. In some of these hearings, Mr. Entorf, we have a proposition where people are tired of dealing with the railroad and want to go off and deal with trucking companies and things of that kind, so that finally the business of the railroad has got down to such a position that the competition has driven them out. Is that the case here? A. I know as far as things that I am familiar with, such as grain, are concerned, there has been absolutely no competition.

Q. Are the people of that community relying on this railroad? A. I believe so, yes.

Q. And they want to use that facility and that of the Great Northern, do they not? A. They do.

Q. Are Valier and Pondera County a progressive community, that is are they growing? A. I think so. The Great Falls Tribune ran quite an article a while back. It said Pondera County has the most beautiful farm homes in Montana.

Q. And you believe that yourself, don't you? A. I believe that. I have seen some of them.

Q. And, aside from that, are the most modern practices in farming engaged in there? A. I believe so. I believe our farmers are right up to snuff.

Q. Rotation of crops? A. Absolutely.

1105 Q. Dusting by airplane? A. They are.

Q. All the forward steps are utilized there? A. Yes.

Q. Do you find in that community men who came there a good many years ago and have stayed there and gone into business and their boys have followed them? A. That's right, some third generation families.

Q. Do you know of many of them who have gone to our Montana Agricultural College for education and come back there to live? A. They have.

Q. Is Valier and Pondera County an important part and a valuable part of the State of Montana? A. I think so; very much.

Q. And, built on farming as it is, would you say that in your considered judgment the taking out of this railroad from it would seriously injure not only this county but the state as well? A. I think so, yes.

Mr. Loble: That's all.

#### Cross Examination

Q. (By Mr. Jardine:) Your elevator burned down, did it not?

A. It did.

Q. How many bushels were in it when it burned down?

1106 A. 30,000, pretty close.

Q. How much was the salvage of the grain? A. Oh, approximately, maybe 18,000 or 20,000 bushels.

Q. Was that shipped by anyone? A. A feeder at Sims.

Q. You mean a feeder near Valier, or was it shipped out? A. This feeder was at Sims. He is a man who is feeding a lot of cattle.

Q. How was it shipped out? A. He had his own trucks.

Q. He trucked the salvage from Valier to Sims? A. He bought it and trucked it.

Mr. Jardine: That's all.

Q. (By Mr. Hagman:) How far is Sims from Valier? A. In a straight line it is—

Q. Well, over the road. A. Well, the way he went out, well, it lies out here west of Great Falls, oh, it might be 50 miles.

Q. From Valier? A. At the most, yes.

#### Redirect Examination

Q. (By Mr. Loble:) That was an unusual situation, was it not? A. Well, yes, it kind of cramped our style.

Q. He bought it at a good price? A. He bought it pretty cheap.

Mr. Loble: That's all.

(Witness excused.)

FORD SCALLEY, was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) State your name, please? A. Ford Scalley.

Q. Where do you live? A. Chinook, Montana.

Q. And what company are you connected with, please? A. I am with the Utah-Idaho Sugar Company.

Q. And what does that company operate at Chinook? A. We operate a sugar factory.

Q. And how long have you been with that company? A. I have been with that company 16 years now.

Q. And what is your official connection with the company? A. I am Montana manager.

Q. Are you familiar with the area of Pondera County that we are talking about? A. I am.

Q. And have you been over much of that territory? A. Yes, I have.

Q. And how do you happen to go over it from time to time? A. We have in the past had quite a sizable acreage at Valier, and we have maintained field representatives to take care of our business in the field. We have had field men for the Conrad and Valier area for practically all the years that we have operated there.

Q. Everyone may not be familiar with how sugar companies operate. Do they go out in advance and sign up the farmers to grow so many acres of sugar beets, or how is it done? A. The sugar beets are grown under contract. Prior to the growing a contract is negotiated with an association of beet growers, these associations being the chosen heads of the growers from the various areas, and through them we negotiate a contract, and upon this contract the farmer is guaranteed the money he will be paid for his sugar beets at a given sugar content and at a given net price of sugar.

Q. Mr. Hagman: Wasn't all that explained at the previous hearing? It seems to me I read it in the record.

Mr. Loble: I don't think so.

Q. (By Mr. Loble:) Now, about how much area has been developed in sugar beets around Valier? A. The factory was located at Chinook with the idea in mind that it was the most central spot for the irrigated acreage that was available for the production of sugar beets at the time that it was located there, and I would

still consider that to be a central spot. For example, we draw beets from Nashua to the east of us, which I would say would be 165 to 170 miles away. We also draw beets from the Sun River Valley, Sims, Fairfield, as well as from Conrad and Valier.

Now it is necessary to draw beets in for long distances in many areas in the country, because the irrigated portions are rather spread out. For example, the only irrigated portions in the Milk River Valley are in the bends of the river, and they just farm those bends for 160 miles down the river. There is no, you might say, great chunk of irrigable land available in any part of northern Montana at the present time.

Q. What would you say as to this country around Valier being adapted to the growing of sugar beets, is it well adapted? A. I would state without qualification that there is no reason why this country should not raise crops on a par with the beet-growing areas of Idaho or Utah or any other beet-growing areas. We have not hesitated to invest considerable time and money in trying to expand the industry at this point. We have maintained a field man, for instance, in the Conrad and Valier area for a considerable number of years with quite a limited acreage, and only with the thought in mind that it could develop into a big beet-producing area. There is no question in my mind as to the possibilities of the Valier and Conrad area. There is fine farming ground. We bought a farm ourselves there two years ago, and have set it up on an experimental basis. We are definitely of the opinion that the past record of production when beets were grown there before the war, when labor problems were not so burdensome, discloses that they produce a good type of beet. Just in going back over the records

I know that, for instance, Mr. Brophy and Mr. Egan who testified, as well as Mr. Heyen and a good many others of these men, were among the highest tonnage growers among the beet growers of our company.

Q. Of your company? A. Yes sir.

Q. Is the sugar beet industry on the march, growing? A. Very definitely. It very definitely is on the march.

Q. In how many states do you operate? A. Five states.

Q. What states are they? A. Washington, South Dakota, Utah, Idaho and Montana.

Q. And among all those states you didn't hesitate to say that the Valier country is as good as any of them? A. I would say definitely that it is as good. The opportunities are possibly greater there. There is a balance of economics in farming from one area to another. While it is true that in some areas you raise higher tonnages you do it on \$600 and \$700 an acre land, and with labor costs considerably above what they are in this particular area. With the



tonnages that are possible in this northern Montana area and the value of land as it is I don't think there is a place in the United States that has the promise that this area has.

Q. And of course the land isn't any \$600 or \$700 an-acre?  
1111. A. That's right.

Q. And the cost of labor is far less? A. That's right.

Q. In your opinion state whether or not the Montana Western Railroad is essential to successful sugar beet operation in that country? A. It is very definitely necessary to the sugar beet industry. Sugar beet growing is always adjacent to a railroad. We have a tremendous amount of incoming traffic, we have to ship many, many supplies in to us. As a matter of fact freight is one of the greatest costs that we have in the sugar beet business, and we have to have railroads.

Q. What do you ship in there? A. We ship lime rock, oil, sacks, machinery supplies, commercial fertilizers, and of course we ship all of our sugar beets into the Chinook factory on the railroad.

Q. That is shipped in, then you ship the beets out? A. We ship the sugar out.

Q. You ship the beets from the farm to your factory over the railroad? A. That's right, and then after we have gone through the processing of the beets, we have three products. We have sugar, the main product, the discard molasses, and the dried pulp.

Q. What do you do with that? A. The sugar of course is used in home uses and industrial uses. The molasses, during the  
1112 war we had to ship it east for the production of citric acid and yeast. At the present time all of our molasses is shipped to one of our Stefanson plants. In the case of Chinook all of that molasses goes to Idaho Falls.

Q. So then, in conclusion, Mr. Sealley, the sugar beet industry depends on railroad transportation from its beginning to the end, does it not? A. That's right.

Mr. Loble: That's all.

#### Cross Examination

Q. (By Mr. Jardine:) So far as the country surrounding Conrad is concerned, that is all served by the railroad serving Conrad, is it not? A. That's right.

Q. The farm you established, is it near Manson? A. That's right.

Q. About 7 miles northwest of Conrad? A. That's right.

Q. The hauling of beets from that area would be to Conrad, wouldn't it? A. That's true, yes.

Q. Likewise any beets produced within 10 miles of Conrad would be hauled to Conrad? A. That is right.

Q. So that the only hauling of beets to Valier would be  
1113 from those areas on the irrigation project where beets might  
be grown where they were closer to Valier or Williams than  
they were to Conrad? A. That's right.

Q. In other words, it just boils down to a basic geographical  
point, at each point when beets are contracted for it is specified on  
the contract where the delivery will be made? A. Of course we  
wouldn't want them to be on the other side half way to Conrad  
and haul beets back to Valier and then pay 50c to haul them back  
to Conrad again. In other words, it is conceivable and actually  
occurs that two farmers, one living across the street from the other,  
would be hauling to two different points. That is the breaking point  
in contracting.

Q. Do you have any record of the acreage in beets in the Valier  
area? A. I don't have that at hand. However, the peak year was  
in the neighborhood of a production of about 15,000 tons.

Q. Do you know how many acres that would have been? A. I  
would judge that would have been upwards of 1500 acres.

Q. What would be the maximum that has ever been grown? A.  
Yes.

Q. Up to this present time? A. That's right.

Mr. Hagman: I think Exhibit 21 shows that.

Mr. Jardine: I thought there was an exhibit in there.

1114 Q. (By Mr. Jardine:) And during the last few war years  
the beet production in that whole area, the whole area of  
Valier and Conrad, dropped down considerably? A. That is true.  
As was stated by those giving testimony earlier today and also at  
the other hearing, in this northern end, when there is a war on  
and a shortage of man power, we are, you might say, at the very end  
of things, the extreme northern part of the country, and it is  
difficult to get labor. We recognize that that, however, is not the  
case today.

Q. There has, however, been some trouble in growing beets in  
Valier due to the short growing season, has there not? A. No,  
not necessarily. Very often people speak of one spot being unfavor-  
able because of too short a growing season. Actually the thing that  
determines the growth and maturity of plant life is the total hours  
of sunlight. Now we enjoy considerably more total hours of sunlight  
on the average here than is true in many other beet-growing areas.

Q. For instance, you can't grow corn in that area successfully,  
can you, your nights are cool? A. However, we can go on north,  
into Alberta, the Canadian Sugar Factory Limited are just putting  
in another factory at Taber, Alberta, to take care of their areas.  
It is a fine beet-growing area, and it is considerably further north  
than this.

Q. How high is it, what elevation? A. The elevation I would judge wouldn't be too high.

1115 Q. The elevation at Valier is about 3800, and I think that area is about 35 miles from the main range of the Rocky Mountains, isn't it? A. Yes.

Q. And do you know how far Taber is from the main range of the Rockies? A. No, I wouldn't know. They have three factories in there now.

Q. Where is Taber with respect to the Rocky Mountains? A. I think Taber is closer down towards the line here.

Q. I mean east or west, do you know? A. I think it is on west.

Q. Is it over toward Cardston then, from Lethbridge? A. It is over in that general direction, general area. They anticipate expanding to 50,000 acres.

Q. You don't think the season is too short in Valier for growing beets yourself? A. I do not.

Q. Don't they sometimes freeze in the ground? A. The freeze that hurt us so severely this year was the only time I've seen a freeze that would knock beet tops. It also hurt everything in the Sidney factory district as far south as Miles City, everything on the high line and everything in Alberta, they all got hurt severely, but that is the first time in the beet-growing area that that has  
1116 happened.

Q. They have had some trouble in the past on account of beets freezing in the ground? A. During the war years there were years when we had freeze-ins.

Q. Because they couldn't get the beets harvested before frost set in? A. We have changed our minds considerably regarding harvesting. From 1940 on back we always began harvesting the 1st of October. Now we begin between the 15th of September and the 1st of October. This year, in spite of the storm that held us up for a week, we were 90% harvested by the 27th of October.

Q. At what date do you plant sugar beets? A. Just as early as we can, you might say, after the fore part of April.

Q. What do you figure the length of the growing season is, the number of days? A. Oh, we, they grow them in just about the same period regardless of where they grow them. The hot months are the portion that they lay out in the Imperial Valley, but their beets mature out in about the same period of time there that ours do here, but I judge—

Q. What period is that? A. For instance, in Montana we will generally average from the 15th of April on through to the 1st of June, and will begin to harvest about the 20th of September, so that would give you just a little spread. Some of them would

1117 be harvested a month earlier in the fall and some would be planted a month earlier.

Mr. Jardine: I think that's all.

Redirect Examination

Q. (By Mr. Loble:) How much do you pay in freight, your company? A. Our freight and express bills just for this one factory operation would run half a million dollars.

Q. The one at Chinook? A. Yes.

Q. Most of that would go to the Great Northern, I suppose? A. Yes. They are very good friends of ours. We have had many dealings with them.

Mr. Loble: All right.

(Witness excused.)

LESTER STEVENSON was sworn and testified as follows:

Direct Examination

Q. (By Mr. Loble:) State your name, please? A. Lester Stevenson.

Q. You were not a witness at the last hearing, were you? A. No.

Q. And where do you live? A. Conrad.

1118 Q. And by whom are you employed, Mr. Stevenson? A. E. L. McDonald & Company.

Q. And E. L. McDonald & Company is located where? A. The main office, Spokane.

Q. And what business does it operate on the Montana Western Railroad? A. Mustard seed business.

Q. Do you have a mustard seed elevator? A. Yes.

Q. And where is it located? A. Manson, Montana.

Q. Manson? A. Yes.

Q. That is between Conrad and Valier? A. Yes, between Conrad and Williams.

Q. And is mustard seed produced in the area around there? A. Oh, yes.

Q. And what is it used for? A. Oh, it goes into prepared foods, salad oils, marine oils, many uses for it.

Q. And where do you ship it to? A. Well, we ship most of it to the east coast, but we do ship all over the world.

Q. You ship all over the world, do you not? A. Yes, 1119 practically.

Q. And in shipping out of Manson to the east coast and all over the world you use the Montana Western Railroad, do you? A. Yes.



Q. And from there on you use the Great Northern? A. Great Northern and other railroads.

Q. How-long have you been with the E. L. McDonald Company?

A. Well, I have worked for the company since 1941, except my service time.

Q. Is the mustard seed industry a comparatively new industry in agriculture, or it is not? A. No, it's been going in Montana for quite a number of years.

Q. Is it on the march, as I said before? A. Oh, there will be more acres planted in the future than there are at the present time, I think.

Q. Is it a crop that requires irrigation? A. No, it can be grown on either dry land or irrigated, mostly on dry land.

Q. Is this elevator devoted entirely to mustard seed? A. Yes.

Q. You don't accept or handle other types of crops? A. No.

Q. And is it a little different in handling than other crops? A. Yes, naturally.

Q. In your opinion does public convenience and necessity require the Montana Western Railroad company to operate?  
1120 A. Yes, it does.

Q. So far as your business is concerned, can you operate successfully unless you have railroad transportation? A. No.

Q. And should there be an abandonment of this railroad have you any reason to believe that you would continue there? A. No, we wouldn't continue there, I don't think.

Q. Is there a considerable acreage of mustard seed around Williams? A. Yes. Most of the farmers all through there have grown it at different times.

Q. Is that a crop that is grown at the same time they grow other crops or— A. Yes.

Mr. Loble: You may inquire. That's all.

#### Cross Examination

Q. (By Mr. Jardine:) Your company at one time had an elevator at Power, didn't it? A. Yes.

Q. Do you still have that? A. No, it's been sold to another partner in the business.

Q. Is it still operated as a mustard seed elevator? A. Yes.

Q. And when did you buy this elevator, or your company,  
1121 rather, buy the elevator up at Manson? A. 1946.

Q. Prior to that time do you know by whom that elevator was owned? A. George Yeager.

Q. He is just a farmer up in that area, isn't he? A. That's right.

Q. He used that as a private elevator, did he not, rather than a public elevator? A. Yes, I think so.

Q. Prior to that it had been owned by one of the line elevator companies, had it not, prior to the time Yeager bought it, or do you know? A. I don't know, but I think a group of farmers owned it at one time.

Q. At one time the elevator had been operated by a line company, and then a group of farmers bought it? A. Yes.

Q. Manson, your station, is about 7 miles northwest of Conrad? A. Yes.

Q. And your company bought this elevator then from a private individual, Mr. George Yeager, who had used it apparently for private grain storage? A. Yes.

Q. You bought it in 1946, during the war years? A. Yes.

1122 Q. I suppose the elevator was available where no others were available? A. Well, we needed more space and had to have more room.

Q. Had you been able to get the same space, for instance, at Conrad, would you have gone to Conrad instead of Manson, would you say? A. No. We have a track site at Conrad.

Q. Oh, I see. You have no elevator at Conrad? A. No.

Q. If you had been able to find an elevator at Conrad would you have bought it? A. Well, I don't know.

Q. Well, you think you might have gone off on a branch railroad in any event? A. Well, the price enters into it. You can't do those things.

Q. But if you could you would do it? A. Well, you can't.

Q. In any event, at the present time you are operating a mustard seed elevator at Manson, Montana? A. Yes.

Q. And you do have a site for an elevator at Conrad? A. Yes.

Q. On which you have not as yet built an elevator? A. That's right.

Q. I suppose, owning a site, you contemplate that you  
1123 might some time build an elevator? A. That's right.

Q. Do you know what effect that will have on your elevator at Manson? A. Well, it won't be a mustard seed elevator if they build one there.

Q. What kind of an elevator? A. We have been thinking of a pea elevator.

Q. Are there any peas raised in that country now? A. There have been in the past. There aren't now.

Q. There haven't been any for a number of years, have there, some 10 or 12 years? A. Oh, not that long. 3 or 4.

Q. Where do they raise peas? A. Up through the Brady area.

Q. And they raised some 3 or 4 years ago? A. Yes. We had some about 5 or 6 years ago that I know of.

Q. Your mustard seed comes in from quite a territory, doesn't it? A. Yes, it does.

Q. Is it hauled in mostly by truck? A. Yes.

Q. And you get some mustard seed up in there from the Sweetgrass hills area? A. Yes.

1124 Q. That is hauled in by truck, isn't it? A. Yes.

Q. That is probably 60 to 75 miles? A. The farthest I suppose is out about that far.

Q. Well, it is 26 miles from—A. To Shelby.

Q. To Shelby from your place, probably, if it's 22, did you say?

A. 26 to Conrad, I know. Yes, it's 26 from there to Shelby too.

Q. From your place? A. Yes.

Q. And then the Sweet Grass hills run, I think Sweetgrass is about 40 miles north of Shelby? A. Something like that.

Q. Of course, the mustard seed doesn't come from the town of Sweetgrass, but it does come from that area up in through Sweetgrass and south of Sweetgrass, you have a lot of mustard seed that comes into your elevator that is hauled distances of from 25 to 75 miles? A. Yes.

Q. That is hauled in by truck? A. Yes, hauled to the elevator at Manson, yes, at the present time.

Mr. Jardine: I think that's all.

1125 Mr. Loble: That's all.

Exam. Witters: Does this mustard seed take the same freight rate as the wheat?

The Witness: No, it takes a higher rate.

Mr. Hagman: That will be explained by our witness.

The Witness: 7 a 7½¢ a cwt.

(Witness excused.)

ROSCOE C. LOTS was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Loble:) State your name, please? A. Roscoe C. Lots, State Chairman of the Brotherhood of Railroad Trainmen for Montana.

Q. Mr. Lots, state whether or not in your opinion the abandonment of Montana Western Railway is against the public interest of Montana? A. Why, in my experience I'd say yes.

Q. And you are familiar with this area up there? A. Yes.

Q. State whether or not the public necessity and convenience requires this railroad to be maintained, the Montana Western Railroad? A. By the records showing the cars shipped out, I would say yes.

Q. In your official capacity in connection with the Union  
 1126 you are familiar with the various contracts under which  
 men working on the railroad operate, are you not? A.  
 That's right.

Q. State under what conditions the employees of the Montana  
 Western Railroad are employed, whether under a contract or other-  
 wise? A. Well, we have no contract with the Montana Western.  
 We have nothing but friendly relationship with them since our men  
 have worked for them.

Mr. Jardine: Do you mean the Brotherhood has no contract with  
 the Montana Western, is that right? A. That's right, but we have  
 no grievance against the Montana Western, neither have we taken  
 any cases to the Board. A request from the members that belong to  
 the Brotherhood of course could be handled by the Brotherhood if  
 conditions arose as to where they would demand a working condition  
 or a schedule on this railroad.

Q. There has been nothing of that kind? A. So far, no.

Q. In other words, the men working for the Montana Western,  
 what is the situation of an employee on the Montana Western Rail-  
 road as to seniority and other things? A. Well, they just don't  
 have any, I suppose. I have never seen a list produced.

Q. They work for the Montana Western just like a person works  
 at an ordinary business, is that right? A. As I understand  
 1127 it they pay the Great Northern rate of pay per day, but they  
 do not have the working rules. They pay the same rate of pay.

Exam. Witters: Whether it is on a mileage or a day basis?

The Witness: Day basis.

Mr. Hagman: They do not have the Great Northern working  
 rules?

The Witness: No, they have no contract with them.

Q. (By Mr. Loble:) Then the fact that they pay the rate of pay  
 is because they want to, it is not because of your Union? A. No, we  
 have filed no complaints against them.

Q. Is there any reason why an employee of the Montana Western  
 Railroad, if he wanted to, could not work part time with the water  
 company, which is also owned by the same interest, part time, and  
 part time for the railroad company? A. He could be perfectly  
 right to do so if that was the agreement he made with the Montana  
 Western.

Q. That is outside of your jurisdiction? A. That's right.

Q. Have you had any indications lately that any efforts were  
 going to be made to bring these men under a contract with you  
 folks? A. My understanding is, or according to hearsay, that they  
 would be willing to sign a Great Northern agreement for these  
 1128 men.



Q. The management would? A. Yes.

Mr. Hagman: Of the Montana Western?

The Witness: Yes, but it hasn't been requested from my Brotherhood.

Q. (By Mr. Loble) And, of course, under present financial conditions on the Montana Western, for them to sign with you would entail even greater burdens of expense, would it not? A. Well, there would be working rules there that they don't come under now, such as terminal switching. I presume they would have to come under a branch line guarantee.

Q. So far as the men are concerned you have not even heard a rumor of any kind that they are going to ask you to do this, have you? A. No, I have had no request for it.

Q. What you have learned from hearsay is that maybe the management might ask them? A. Well, I understood that the section men had signed a maintenance-of-way agreement. It is only hearsay.

Q. And, having in mind the financial situation of the Montana Western at the present time, if the management is desirous of signing up added obligations, that would be more reason why they would feel it necessary to abandon the railroad, wouldn't it? A.

1129 Well, I presume they could show it was an increased cost of operation.

Q. Now there is a part of this railroad up at Conrad that is part of the Great Northern's line there, is it not, the switching line? A. Yes.

Q. You operate over that yourself, do you not? A. Yes.

Q. What is your regular job? A. Conductor.

Mr. Hagman: I have no objection to this, but I read all about this in the transcript of the last hearing, in which he testified.

Mr. Loble: I am not going into the testimony.

Q. (By Mr. Loble:) You did testify at the last hearing, did you not? A. Not in regard to a contract coming up, I don't think.

Q. And whatever you testified at the previous hearing you reaffirm here now, do you not? A. That's right.

Mr. Loble: I think that's all.

#### Cross-Examination

Q. (By Mr. Jardine:) Did you say that you understood that the Montana Western Railway Company had approached the maintenance-of-way workers with the idea of going into a contract similar to the contract with the Great Northern? A. I heard that  
1130 they had made a contract similar to the Great Northern's contract, yes.

Q. What? A. The same contract.

Q. The maintenance-of-way men? A. The maintenance-of-way men on the Montana Western.

Q. Well, where did you hear that? A. Well, first I heard it in Valier, and then in Great Falls.

Q. From whom? A. Well, I heard it from Hanson of maintenance-of-way.

Q. That they had signed a contract? A. Had a contract.

Q. Well, if they had a contract it would have to be a signed contract, wouldn't it? A. It would have to be, it wouldn't be no good if it wasn't.

Q. And if there was such a contract you would say that would increase the cost of the Montana Western insofar as the maintenance of the right-of-way of the railroad is concerned? A. Well, it would be an increased cost of operation of train crews, I would say.

Q. How does that come about? A. Well, we have a guarantee on the Great Northern of 2400 miles a month. On branch lines that would be 24 days.

Q. Well, does maintenance of right-of-way in any way affect fellows who take care of the repair of the tracks and things  
1131 of that sort? A. They are the maintenance.

Q. They are the maintenance? A. Yes.

Q. Now then, what do you call the others? A. The others are the men operating transportation.

Q. And you heard that they signed both contracts? A. No. No.

Q. Which one? A. I heard they had a contract with the maintenance-of-way men.

Q. What? A. I heard they had a contract with the section men.

Q. I am asking you about the section men? A. That is the one they have a contract with.

Q. If there was such a contract in what way would that effect an increased cost on the Montana Western? A. It wouldn't, but I would say you might have a 40-hour week come in there. I don't know their vacation periods or what they give them now. I don't know anything about their agreement.

Q. Well then, if such a contract was signed with these maintenance men, so far as you know it wouldn't effect any increased cost to the Montana Western? A. I don't know.

1132 Q. Now, with respect to the operation, you never heard that there was a contract signed in respect to the operation?

A. Oh, I'd know that if there was.

Q. What? A. I'd know that if there was.

Q. But you did hear that there had been an application to have it signed? A. My understanding was that they wanted to sign it.

Q. Who wanted to sign it? A. The Montana Western.

Q. The Montana Western wanted to enter into a contract with the operating crew? A. That's right.

Q. From whom did you hear that? A. Well, I understood it from the maintenance-of-way man, Mr. Hanson.

Q. Mr. Hanson, the maintenance-of-way man? A. I told him my organization didn't.

Q. I am talking about the operation, and you said that there wasn't any contract signed with the operating crew? A. That's right.

Q. But you understood that the Montana Western had approached the operating crew with the idea of getting such a contract, is that right or wrong? A. That's right.

1133 Q. And you understood that because you were told that by Mr. Hanson? A. Yes.

Q. And that is how you understood it, and that is where this hearsay that you have spoken of comes in, is that true? A. That's right.

Q. And Mr. Hanson, if he got it from the Montana Western, would naturally get it from Mr. Atwood? A. I wouldn't know. Under the friendly relations that we have carried on with this railroad company, we have had no arguments with them, we've never had any trouble and don't have any now.

Q. But my understanding is that there has been according to your testimony a contract signed with the maintenance men but no contract signed with the operators? A. We have no contract with them.

Q. But that the Montana Western had approached the operators with references to the signing of a contract? A. They have never said anything to me.

Q. Well, what about the men out there? A. Well, of course, the men would have to have the organization sign for them.

Q. But you heard a rumor that they had approached the men? A. I told you what Mr. Hanson told me, that he had an agreement with them for his maintenance men, and he heard that they  
1134 were asking for the rest of them to sign up, the operating men.

Q. Well, they must have approached the men? A. Well, I wouldn't say. Certainly the men are going to have the Brotherhood sign a contract for them.

Q. Whom would the Montana Western approach on a matter of this kind? A. Well, they would probably approach the Brotherhoods. That is more than likely whom they would go to.

Q. Well, how would Mr. Hanson know about this? A. He is assistant to the General Chairman on the Great Northern out of St. Paul.

The Witness: May I request the I. C. C. at this time, if this application is granted, that conditions be wrote in for the employees?

Exam. Witters: Yes, you may make that request.

The Witness: That's all I have.

Mr. Jardine: That's all.

Mr. Loble: That's all.

(Witness excused.)

We rest.

Exam. Witters: You state that you rest. Are you going to put anything in on your joint rates and divisions case?

Mr. Loble: Nothing other than what we have put in.

Mr. Hagman: Well, I am interested, because I am ready to present our case, but I naturally want the plaintiff to put in all 1135 of ~~our~~ case first.

Mr. Loble: Well, it is based on what we put in and on what the previous record shows.

Mr. Hagman: So that you have now presented your case on behalf of the plaintiff?

Mr. Loble: That's right.

Mr. Hagman: Involving the joint rates and divisions?

Mr. Loble: That's right.

Exam. Witters: We will recess at this time and resume at 9:30 tomorrow morning, gentlemen.

(Whereupon, at 4:55 p.m., the hearing in the above-entitled matter was recessed until 9:30 a.m., Tuesday, December 6, 1949.)

1136 BEFORE THE INTERSTATE COMMERCE COMMISSION

Federal Building,  
Great Falls, Montana,  
Tuesday, December 6, 1949

Met pursuant to adjournment.

BEFORE:

MYRON WITTERS, *Examiner*

Appearances:

As noted on previous day.

Proceedings

1139 Exam. Witters: Are we ready to proceed?

Mr. Jardine: Yes, we are ready.

Exam. Witters: Proceed. Are you ready for the defendant's case?

Mr. Jardine: Yes, the defendant is ready to proceed. We have some exhibits that we intend to introduce, and they are prepared in



the order in which they will be introduced, with two copies of each. (Handing copies of exhibits to Examiner Witters.)

Exam. Witters: The Montana Western Railway Company general balance sheet of October 31, 1949, will be identified as Exhibit No. 29.

(Exhibit No. 29, no witness, marked for identification.)

Mr. Jardine: I wonder if the record may show that that is a supplement to Exhibit No. 8 that was introduced in the original proceeding?

Exam. Witters: Yes. The income account will be marked Exhibit No. 30 for identification.

(Exhibit No. 30, no witness, marked for identification.)

Mr. Jardine: That is a supplement to Exhibit 9.

Exam. Witters: And the next one, entitled Number of Employees, Total Time and Compensation, will be marked for identification as Exhibit No. 31.

(Respondent's Exhibit No. 31, witness Atwood, marked for identification.)

Mr. Jardine: That is a supplement to Exhibit No. 13.

Exam. Witters: And the next one, entitled "Expenditures in addition to Normal Operating Expenses which must be Incurred During Years 1950, 1951 and 1952 in order to continue safe operation of the Railroad," will be identified as No. 32.

(Respondent's Exhibit No. 32, witness Atwood, marked for identification.)

Mr. Jardine: That is not a supplement to anything, but there was testimony in the last case with reference to it.

Exam. Witters: And the next one, entitled "Expenditures which are Necessary to Effect Reasonably Economical Operations," will be identified as Exhibit No. 33.

(Respondent's Exhibit No. 33, witness Atwood, marked for identification.)

Mr. Jardine: And that is not a supplement to anything, although evidence in respect thereto was introduced in the last hearing.

Exam. Witters: And the next one, consisting of three sheets, entitled "Estimated Expenses for the year 1950," is identified as Exhibit No. 34.

(Respondent's Exhibit No. 34, witness Atwood, marked for identification.)

1141 And the next one, entitled Estimated Revenue for the year 1950, will be identified as Exhibit No. 35.

(Exhibit No. 35, Witness Atwood, marked for identification.)

And the next one, entitled "Tons of Grain Shipped by Rail from Valier, Manson and Williams," will be identified as Exhibit No. 36.

(Exhibit No. 36, Witness Atwood, marked for identification.)

And the next one, entitled Estimated Net Results of Operations Year 1950 and under Normal Conditions, and Increases in Revenues Required to meet Estimated Deficits," is identified as Exhibit No. 37.

(Exhibit No. 37, witness Atwood, marked for identification.)

C. E. ATWOOD was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Jardine:) Your name is Mr. C. E. Atwood? A. That's right.

Q. And you are the superintendent of the Montana Western Railway Company? A. Yes.

Q. You are the same Mr. C. E. Atwood who testified at the abandonment hearing at Valier in July of this year? A. I 1142 am.

Q. And since that time you have continued to be and are now superintendent of the Montana Western Railway? A. Yes.

Q. At that hearing, Mr. Atwood, there was an exhibit referred to which was Exhibit A to the Return to Questionnaire, and you now have in your hands a proposed Exhibit No. 29, and isn't it a fact that that exhibit simply brings the former exhibit up to date of October 31, 1949, instead of March 31, the date to which the last exhibit was taken? A. That is a fact.

Q. And it represents the condition of the general balance sheet of the Montana Western Railway Company up to date of October 31, 1949? A. That's right.

Mr. Hagman: Does the record show that Exhibit 29 brings up to date Exhibit 8 in the previous hearing?

Q. (By Mr. Jardine:) That Exhibit 29 is a supplement to Exhibit 8, and brings Exhibit 8 up to the date of October 31, 1949? A. Yes.

Mr. Jardine: We offer Exhibit 29 in evidence.

Exam. Witters: It is received.

(Exhibit No. 29, witness Atwood, received in evidence.)

1143 Q. (By Mr. Jardine:) Mr. Atwood, referring to proposed Exhibit No. 30, which is entitled "Income Account, Montana

Western Railway Company," which Exhibit No. 30 is a supplement to Exhibit 9 introduced at the hearing at Valier in July, and which Exhibit No. 9 introduced at the hearing at Valier was Exhibit attached to the Return to Questionnaire, does this Income Account, Exhibit No. 30, represent the conditions as represented by your income account on your books up to October 31, 1949? A. It does.

Q. And does it supplement the prior Exhibit No. 9 and bring it up to date of October 31, 1949? A. It does.

Q. And it is a true representation of the condition of affairs of the railroad up to October 31, 1949 instead of March 31, 1949, as shown by Exhibit No. 9? A. That's right.

Mr. Jardine: We offer Exhibit No. 30 in evidence.

Exam. Witters: It is received.

(Respondent's Exhibit No. 30, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) Mr. Atwood, at the hearing at Valier we introduced an exhibit, No. 11, which showed the products of agriculture and miscellaneous products over a period, I think, from 1933 to 1948, and then up to March 31, 1949, and have you supplemented that exhibit, or do you have any figures supplementing that exhibit to show the number of tons hauled on the Montana Western Railway—

Exam. Witters: The next exhibit I have here—

Mr. Jardine: Well, this isn't an exhibit. I am just putting these figures in to supplement Exhibit 11. It isn't an exhibit. These are simply supplementary figures to Exhibit 11. The figures are in the record up to March 31. Now, instead of March 31, 1949, I am continuing the tons hauled by the railroad from January 1, 1949, up to October 31, 1949, which will bring Exhibit No. 11 up to date, from 1933 to October 31, 1949.

Q. (By Mr. Jardine:) Now, Mr. Atwood, you have a record showing the products of agriculture in tons shipped on that railroad in 1949? A. I have.

Q. Will you read what they are? A. January 1 to October 31, 1949, products of agriculture, 33,730 tons.

Q. And the next? A. Animals and products, 258 tons; products of mines, 104 tons; products of forests, 296 tons; manufacturing and miscellaneous, 590 tons; all l.e.l., that is less than carload, 487 tons; total for the period under discussion is 35,465 tons.

1145 Q. Now, Mr. Atwood, will you tell us what the total operating revenue was that was produced, from the hauling of products over the railroad during that period of time? A. Total operating revenue, January 1 to October 31, 1949, inclusive, is \$68,321.88.

Q. And will you give us the total cost of operations during that same period of time? A. The total cost of operations during that period is \$74,334.67.

Exam Witters: That is the operating expenses?

The Witness: That's right.

Q. (By Mr. Jardine:) Mr. Atwood, in the last hearing there was introduced an exhibit, No. 12, which showed the passenger revenue up to and including the year 1948, and possibly up to and including March 31, 1949. At any rate, you do have figures, do you not, showing the total number of passengers carried over the Montana Western from January 1, 1949, to October 31, 1949, and the total revenue derived from carrying those passengers during that period of time? A. Yes, I have.

Q. Will you tell us what that is? A. The total number of passengers carried for the period involved in the question is 263. The total revenue was \$103.

Q. Now, Mr. Atwood, something was said about not carrying passengers, and reducing the expenditures. Would the elimination of the passenger traffic on that railroad in any way eliminate any expenditures that you incur? A. No, it wouldn't.

Q. The amount of revenue that you get from the passengers is just that much more than you would get, and you would not eliminate any expenditures by eliminating the passenger traffic, would you? A. That's right.

Q. Now, your next exhibit, No. 31, is the number of employees, total time and compensation, from January 1, 1933, to October 31, 1949, inclusive. This supplements Exhibit No. 13 in the original hearing, and brings that exhibit up to date of October 31, 1949, is that true? A. That's right.

Q. So the additional facts shown on this exhibit are the facts from January 1 to October 31, 1949. You show the average number of employees during that period, the total man hours of employees, the total compensation, and the average compensation per man hour, brought down to October 31, 1949? A. I have, yes.

Mr. Jardine: We offer Exhibit No. 31 in evidence.

Exam. Witters: It is received.

(Exhibit No. 31, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) Mr. Atwood, the next proposed exhibit is Exhibit No. 32. This exhibit is entitled "Expenditures in addition to normal operating expenses which must be incurred during years 1950, 1951 and 1952 in order to continue safe operation of the railroad." Now it might be well for you to explain how you arrived at—well, withdraw that question. The first



item is ties. In a normal year you replace how many ties? A. 4850.

Q. And you have figured that for the next three years, in order to continue safe operation of the railroad, you will require 9,000 additional ties, is that true? A. That's right.

Mr. Hagman: Does that mean 9,000 over and above the 4850 normally?

Q. (By Mr. Jardine:) Mr. Atwood, that 9,000 ties for the next three years, is that in addition to your normal replacements of 4850 ties a year? A. It is.

Q. And for the year 1950 can you tell us how many additional ties you figure it will be necessary to replace in order to continue safe operation of the railroad? A. 4,000.

Q. And for the year 1951? A. 3,000.

Q. And for the year 1952? A. 2,000.

1148 Q. And the figures with respect to ties shown in your exhibit under the years 1950 as \$14,440, is that the cost of 4,000 additional ties that you would replace, in addition to the 4850 normal replacement? A. That's right.

Q. And that is the cost of the 4,000 additional ties for the year 1950? A. Yes.

Q. Likewise, under the year 1951, the cost of the 3,000 additional ties, in addition to your normal replacements, is \$10,830? A. That's right.

Q. And for the year 1952 the 2,000 remaining additional ties the cost you have figured at \$7,220? A. Yes.

Q. And under Item No. (1), figure, 1, you show the cost of the ties, cost of unloading, and the cost of placing the ties, is that true, Mr. Atwood? A. That's right.

Q. And that is figured on present day costs? A. Present day costs.

Q. Now, in connection with the operation, in order to continue safe operation of the railroad, did you figure it was necessary to replace 16,000 tie plates, referred to? A. Yes, it is.

1149 Q. And you have the cost of those additional replacements and the cost of placing them, that is the tie plates? A. I have.

Q. And the total cost of those two items, the tie plates and placing them, for the three-year period, is \$4,720? A. That's right.

Q. And that likewise is broken down to show the cost of replacing those tie plates in each of the three years, showing a cost in the first year of \$1,775. That is occasioned by more of them being used, is it not, by reason of the additional ties that you put down that year?

Mr. Hagman: May I ask a question there? Is that expense in Item 2 for tie plates an expense of replacing or expense of the initial placing of tie plates?

Mr. Jardine: Mr. Atwood can answer that.

The Witness: That is the expense of initially placing them. We have no tie plates where these would be placed.

Q. (By Mr. Jardine:) The cost in the year 1951 is \$1575? A. That's right.

Q. Now, as an additional cost, in order to continue safe operation of the railroad, you have figured the repair of the Dry Fork Bridge at \$5500? A. Yes.

Q. I believe that was referred to at the previous hearing, 1150 was it not? A. Yes, it was.

Q. And in order to continue safe operation of that railroad do you figure that that replacement must be made in the year 1950? A. I certainly do.

Q. Would it be safe to continue the operation of that railroad without it? A. No.

Q. And as a matter of fact do you figure that all of these ties and tie plates are absolutely necessary in order to continue safe operation of the railroad? A. Yes.

Q. During the period of 1950, 1951 and 1952? A. That's right.

Q. Now, in Item 4 you have Repair Valier Roundhouse, \$7,000, and you have that shown in the year 1952?

Exam. Witters: It says "replace" here.

Mr. Jardine: Replace Valier Roundhouse.

Mr. Loble: You said "repair."

Mr. Jardine: I beg your pardon.

Q. (By Mr. Jardine:) Will you tell us what that item is, and why you consider it necessary, Mr. Atwood? A. The building has deteriorated to the extent that it is almost impossible to repair it any more. The nails are rusted off, the studdings are rotted, the 1151 sills are rotted, the sill joists are all dry rot, so there is nothing left to repair on it.

Q. And is it necessary that you have a roundhouse at Valier? A. It is.

Q. You couldn't operate without one, could you? A. No.

Q. And you figure at least by 1952 you will have to replace the present roundhouse? A. That's right.

Q. Now, under "Notes" you have notations showing to what account the different items are chargeable, for instance, Item No. 1, chargeable to operating expenses. That is simply where these items are charged on the books of the railroad, isn't it? A. That's right.

Q. And they indicate in each case where each item is charged on your books? A. Yes.

Mr. Jardine: We offer in evidence Exhibit No. 32.

Exam. Witters: It is received.

(Respondent's Exhibit No. 32, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) Referring to proposed Exhibit No. 33, entitled "Expenditures which are necessary to effect reasonably economical operations," it would be advisable that these items 1152 be completed as soon as possible; is that right? A. That's right.

Q. Now, Mr. Atwood, do these represent items that the railroad can operate and get along without? A. Yes.

Q. According to the notation on your exhibit they should be completed as soon as possible, but if they were not completed, and if these items were not done, nevertheless, the railroad could run? A. Yes.

Q. But the items referred to in Exhibit No. 32, the ties and tie plates and repair of Dry Fork Bridge, and the replacement of the roundhouse, are absolutely necessary in order to safely operate the railroad? A. Absolutely necessary for that purpose.

Q. Now, the items in Exhibit No. 33, the first item is widening cuts and ditching, \$18,000. Does that represent the total cost of widening cuts and ditching, as you estimate it at this time? A. It does.

Q. Based on the present cost of doing that kind of work? A. That's right.

Q. And the next item is ballast, 16,000 cubic yards, at \$3.00 a yard of the amount of ballast, would that be, Mr. Atwood? A. That is gravel ballast.

1153 Q. And that \$3.00 a yard includes placing it on the track? A. That is in the track.

Q. In the track, rather, A. Yes.

Q. And you have estimated that cost at \$48,000? A. That's right.

Q. That includes all costs in connection with the ballast, and placing it in the track? A. That's right.

Q. The next item, No. 3, is a coal loader, \$4,000. Will you explain why a coal loader is reasonably necessary in your operation? A. For a good many years we obtained our coal from the Great Northern Railway at Conrad, where they had a coal dock. When diesel operations came in they eliminated their coal dock, so then we had to handle all the coal. Well, we have no facilities for handling coal except by hand. It means lifting the coal from the platform where it has been unloaded into a tender, and this at the present rate of wages is extremely expensive and uneconomical. It's a double lifting of coal.

Mr. Young: Mr. Jardine, may I ask—do you mean by that that the coal is actually shoveled by hand?

The Witness: Shoveled by hand.

Mr. Young: Twice?

The Witness: Twice. It is the only way we have of getting  
1154 it on the tender.

Q. (By Mr. Jardine:) The total of these items is \$70,000?  
A. That's right.

Mr. Hagman: Do you have any objection if I ask Mr. Atwood a question or two?

Mr. Jardine: No, I have no objection.

Mr. Hagman: It is not cross-examination. I was noticing that first item, widening cuts and ditching, \$18,000. I am just wondering what the effect is of not having these cuts widened or ditched.

Q. (By Mr. Jardine:) Will you explain that, Mr. Atwood. A. The cuts are so narrow that to replace a tie you have to tunnel into the bank to get the new tie in. The old tie can be taken out by breaking it up, but you can't get the new tie in without digging a tunnel in the bank or side of the cut in order to place the new tie under the rails.

Q. And what about the ditching? A. The ditching is necessary to give some draining to the track. As it is now, water accumulates in these cuts, softens the track, and the mud squeezes up between the ties. It means a constant source of maintenance to keep the track lined and level.

Mr. Hagman: Does that moisture in there also deteriorate the ties faster?

The Witness: Yes, it does. It permits fungus to start in  
1155 the ties in warm weather.

Q. (By Mr. Jardine:) And why would you figure the ballast was reasonably necessary to effect reasonably economical operations? A. The track stands today sitting on dirt. When the rains come on or the freeze goes out in the spring, of course it gets soft, and as a result you can't hold your track in line or level, and the mud squeezes up between the ties. With eight inches of gravel ballast under the ties this condition wouldn't exist. There should be a drainage under the ties also to permit the water to drain off.

Mr. Hagman: But that ballast, does that contemplate ballasting the whole railroad or only certain parts?

The Witness: The whole railroad.

Mr. Jardine: We offer Exhibit No. 35 in evidence.

Exam. Witters: It may be received.

(Respondent's Exhibit No. 33, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) Mr. Atwood, in Exhibit No. 34, you have listed estimated expenses for the year 1950. In addition to the esti-



mated expenses in a normal year have you figured the expenses that are to be incurred in the year 1950 in order to continue safe operation of the railroad? A. Yes.

Q. And, referring to the first item, under Maintenance of 1156 Way and Structures, materials required, you have listed Cross Ties, treated, 8850, at \$2.73 each. Does that include the 4850 normal replacements of ties, plus the 4,000 additional replacements that you said were necessary in order to safely operate the railroad? A. Yes, it does. I might explain the \$2.73 is cost of material. On Exhibit 32 it shows 88c for placing. That will be done under labor required.

Q. The first item then simply includes the \$2.67 plus the 6c for unloading, or \$2.73? A. That's right.

Q. And labor is figured in in another item under the estimated expenses for the year 1950? A. That's right.

Q. That is 88c that you have figured as labor? A. That's right.

Q. Now, under labor required, you have figured a section crew and section men, and is that based on your present cost of labor? A. Based on the present schedules of wages.

Q. And that is continued into the year 1950, showing the cost of labor based on the schedule that was paid to labor in the year 1949, it isn't based on the cost over a 15-year period? A. No.

Q. It is based on the actual '49 costs? A. That's right.

1157 Q. Your next item is overhead and miscellaneous, and I don't see any items that I need to refer to. If anybody wants to refer to them of course they may on cross-examination. Your next item is maintenance of equipment, and your large item there is the annual inspection and repairs to locomotive No. 10 and gasoline-electric car No. 31, a total of \$3,393. How do you estimate those expenses for the year 1950? A. That is estimated on what it has been the past few years, and also on what would be required for the annual inspection of the two pieces of equipment. Now Locomotive No. 10 has had its flues removed and replaced, and the other heavy repairs required in these inspections has been done.

Q. Now, going to page 2, and I am not giving these items, because nobody is requesting them, I am simply trying to cover the larger items. Under transportation, rail line, in the first line, you have figured round trips with steam locomotive No. 10, 122 trips at \$88. Will you tell us how you arrived at that figure, and if that figure represents costs based on the 1949 costs? A. The figure of 122 trips is based on past experience. We have to use the steam locomotive when we have too much traffic for the gasoline electric to carry. Also in the winter when snow conditions prevent the gasoline electric running, why we have to use the steam locomotive, and it runs

out about 122 trips a year. The \$88 per round trip is based on the present scale of wages. The same with the gasoline electric, 195 trips. That is in the fall or any time of the year when we are hauling grain and we have more carloads than we can handle in one trip for the gasoline electric, but not enough to pay or warrant running an extra trip with the steam locomotive or running a round trip with the steam locomotive, we run extra trips with the gasoline electric to keep up with our traffic.

Q. Why are the extra trips figured at \$21.00 and the round trips at \$44.00? A. Well, overtime doesn't start until around 3:00 o'clock in the afternoon, so a part of the second trip is made within the eight hours. That comes in on the morning trip and after that it goes into overtime. That's about the way it figures out.

Q. Is that your past experience on the cost of these trips? A. Yes.

Q. And the cost of the extra trips is based on past experience? A. That's right.

Q. With the costs figured on the basis of the 1949 costs? A. That's right.

Mr. Hagman: May I ask about something on page 2?

Mr. Jardine: Yes.

Mr. Hagman: I don't know, perhaps the record already shows, but I was wondering what the steepest grade is, and what the maximum number of cars is that each of these locomotives can handle between Valier and Conrad?

The Witness: The key grade out of Valier is 3%. It is located about a mile and a half out of town. That limits the amount that our steam locomotive can carry to eight carloads. The gasoline electric is limited to two carloads of grain. Down the line at Williams we can pick up two more carloads that the steam locomotive can handle on into Conrad.

Mr. Hagman: This 3% grade is against the loaded movement from Valier to Conrad?

The Witness: Yes. And the gasoline electric can handle one more car into Conrad picked up at Williams or Manson.

Mr. Hagman: That was all.

Q. (By Mr. Jardine:) Now, on page 3, Mr. Atwood, it shows the State and County taxes for the year 1949, in the amount of \$4,400. They haven't been paid? A. No.

Q. Likewise, half of the 1948 taxes, \$1,900, State and County, have not been paid? A. That's right.

Q. Your estimate for the year 1950 of the payroll railroad retirement is \$2490? A. That's right.

Q. Is that based on actual? A. That is based on the payroll that is shown here.

1160 Q. And that figure is not only an estimate but it will be very, very close to the exact figure? A. Yes.

Q. And your estimates in all these cases have been as close as you can figure as to what the exact figure will be in 1950; have they not? A. As close as I can estimate.

Q. You have an item under hire of equipment, freight train cars and locomotives, is that based on past experience? A. Yes, it is.

Q. Related to present cost? A. Yes.

Q. Then you have interest on funded debt.

Mr. Hagman: Mr. Atwood, do you hire any locomotives?

The Witness: Yes.

Q. (By Mr. Jardine:) Why do you hire locomotives? A. Sometimes when our locomotive breaks down and we have more than our gasoline electric can carry, we have to hire a locomotive from the Great Northern.

Q. Your next item is interest on funded debt, that is the interest on the \$165,000 first mortgage to the Great Northern Railway? A. That's right.

Q. And your next item is charges to other accounts. These are not included in any prior estimate, are they? A. No.

1161 Q. The \$1775 for tie plates, is that right? A. That's right.

Q. And those tie plates are tie plates that you figured were absolutely required during the year 1950? A. That's right.

Q. In order to operate this railroad? A. That's right.

Q. The next item is replacement of Dry Fork Bridge. In this item you have \$5000, and the item in Exhibit 32 showed a total cost of \$5500. Will you explain the difference between \$5000 and \$5500? A. The \$5000 is chargeable to investment account. It is a replacement. The \$500 is what it will cost to retire the old members of the bridge which have to be replaced. That is included in this maintenance of way and materials required and labor. It is in the labor is where it is.

Q. In other words, the whole \$5500 is shown, this item of \$5500 and the labor in another item under labor on Exhibit 34? A. That's right.

Q. And then your next item is "Deduct depreciation"? A. Yes. That was done to show the cash expenditures required. Depreciation is not cash.

Q. And of course the amount you deduct for depreciation, you don't have to actually have in cash in order to operate the 1162 railroad? A. That's right.

Q. That leaves you, according to these figures, with \$113,948? A. That's right.

Q. That is your total estimated expenses for the year 1950? A. Yes.

Q. Now you have a note that this does not make provision for working capital, is that true? A. That's right.

Q. Does it make any provision for the use of Great Northern track, switching track, or employees, at Conrad, Montana? A. No, it does not.

Mr. Hagman: May I ask a question about taxes? That shows State and County taxes, 1949, \$4400. Now this, as I understand it, is estimated expenses for 1950. Will any of the 1950 taxes have to be paid in 1950? A. They will on November 20.

Mr. Hagman: Have you anything in here on that? A. I haven't it in there. I don't know what they will be.

Mr. Hagman: Well, anyway, this estimate of 1950 expenses does not include then the part of the 1950 taxes that you will have to pay in 1950? A. That's right.

Q. (By Mr. Jardine:) That would be half of the 1950 taxes that will become due on November 30, which are not included 1163 here? A. That's right.

Q. One of the reasons you didn't include them, your 1948 taxes apparently were about \$3800, half of which weren't paid? A. That's right.

Q. Your 1949 taxes increase from about \$3800 in '48 to \$4400 in 1949? A. That's right.

Q. You don't know whether there will be a like increase in 1950, do you?

Mr. Loble: It would be reasonable to suppose that it would be about \$2200?

The Witness: Yes, it is reasonable.

Q. (By Mr. Jardine:) That is assuming there isn't any increase like there was last year? A. That's right.

Q. If there was a \$600 increase like there was last year it would be \$2500? A. That's right.

Mr. Hagman: Well, I notice on your very last line it says Cash Expenditures, \$113,948. Does that mean that you actually have to have that much cash to meet expenses for 1950 as you estimate them? A. Yes, we do.

Mr. Hagman: And that is why you deducted that depreciation, because this is gotten up on the basis of actual cash needed, is that right? A. That's right.

1164 Mr. Jardine: We offer Exhibit No. 34 in evidence.

Mr. Booth: Before Exhibit No. 34 is received, I believe there are two slight errors on the exhibit. In the item Rails under maintenance of way and structures, the figure 8,0357 gross tons should read 8,0357 gross tons, and under the same general heading, in the item Lumber, the figure 6,500 M.B.M. should read 6,500 M.B.M.



Mr. Jardine: That's right. With those corrections we offer Exhibit No. 34 in evidence.

Exam. Witters: It may be received.

(Respondent's Exhibit No. 34, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) The next proposed exhibit is Exhibit No. 35, estimated revenue for the year 1950, Mr. Atwood? A. That's right.

Q. And in connection with that exhibit will you tell us how many tons you figured as the tonnage over the line during that year in arriving at your figure of revenue? A. The tons of grain would be 25,600.

Q. You figured 25,000 tons of grain? A. That's right.

Q. And when you say 25,000 tons of grain you use tons of grain because grain is what we have been talking about practically entirely in this proceeding? A. I mean insofar as increase of revenue is concerned. In that figure of \$52,590 there are other small amounts inbound and outbound.

Q. So that includes all your estimated freight revenue for the year 1950, including 500 cars of grain, or 25,000 tons of grain? A. That's right.

Q. And you have also estimated the passenger, baggage and mail revenue. And are the estimates of the revenue based on the present receipts that you would get for hauling, for instance, a car of grain? A. That's right.

Q. And your present receipts for mail? A. That's right.

Q. And likewise your estimated passenger revenue is based, I suppose, on the revenue that you have been receiving in the last year or so? A. Yes.

Q. Your passenger revenue, as shown by a prior exhibit, has greatly decreased in the last few years? A. Yes.

Q. You show a miscellaneous income of \$420, is that based on your experience in the last year or so, the last item? A. Yes.

Q. You also show a miscellaneous rent income of \$50.00? A. Yes. Those items cover leases for elevator sites and pipe line crossings, things of that nature.

Q. So your total income estimated for the year 1950 is \$56,508? A. That's right.

Mr. Jardine: We offer Exhibit No. 35 in evidence.

Exam. Witters: It may be received.

(Respondent's Exhibit No. 35, witness Atwood, received in evidence.)

Let me ask you a question about the item of demurrage. Is the Montana Western Railway a party to the general demurrage tariff?

A. Yes.

Exam. Witters: That's all.

Q. (By Mr. Jardine:) And your next proposed exhibit is No. 36, entitled Tons of Grain (Wheat, Barley, Rye, Mustard Seed and Flaxseed), that means those are all included in the tons of grain?

A. That's right.

Q. Shipped from Valier, Manson and Williams for the years 1934 to 1948, inclusive, is that correct? A. I don't have a copy.

Q. You don't have a copy? (Handing witness a copy of the exhibit) A. That's correct.

Q. Those are the actual tons of those grains shipped during 1167 the years 1934 to '48 inclusive? A. Yes, they are.

Q. Your average for the years 1934 to '48 inclusive was? A. 23,586.

Q. And for the years 1939 to 1948, inclusive? A. 25,774 tons.

Q. 25,000 tons would represent approximately how many cars of grain, Mr. Atwood? A. 500.

Exam. Witters: At 50 tons a car?

The Witness: That's right.

Mr. Jardine: We offer Exhibit No. 36 in evidence.

Exam. Witters: It will be received.

(Respondent's Exhibit No. 36, witness Atwood, received in evidence.)

Q. (By Mr. Jardine:) You next have proposed Exhibit No. 37, entitled "Estimated net results of operations year 1950 and under normal conditions, and increases in revenue required to meet estimated deficits." Mr. Atwood, your first line shows the estimated cash expenditures for the year 1950 of \$113,948, and that is the figure shown on Exhibit No. 34, is that not correct? A. That's right.

Q. And your estimated revenue of \$56,508 is the estimated revenue shown on Exhibit No. 35? A. That's right.

1168 Q. And the estimated excess of expenditures over total revenues for the year 1950, according to that, is \$57,440, is that correct? A. Yes sir.

Q. And if you take from that the interest on bonds, and don't pay it, and don't pay the \$1900 taxes for the second half of 1948 and the \$4400 for the 1949 taxes, or a total of \$6300, if those two items of taxes are not paid and the \$9900 in bond interest is not paid during the year 1950, there would be a deduction of \$16,200 from that figure, would there not? A. There would.

Q. And in the event you did not pay those two items of \$16,200 your requirements would be reduced by that amount for the year 1950, or \$41,240, is that correct? A. Yes sir.

Q. Then you have estimated the freight revenue for the year 1950 at \$52,590? A. That's right.

Q. Is that the freight revenue on grain? A. On grain, on other earload freight, and l.c.l.

Q. And you then have figured the amount necessary in percent increase in freight revenue required in percentage to pay the \$57,440? A. Yes sir.

1169 Q. Now that percentage is 109.2%? A. That's right.

Q. And to produce \$41,240, that is the item if you don't pay the interest on bonds or State and County taxes, the increase required would be 78.5%? A. Yes sir.

Q. Now you figure likewise the estimated revenue of grain required and figure the estimated increase required per cwt? A. That's right.

Q. And will you tell us what that is? A.  $11\frac{1}{2}\%$ . That is obtained by dividing the deficit of \$57,440 by 500,000 cwt. Then figuring the deficit before interest on bonds and state and county taxes, or \$41,240, would require  $8\frac{1}{4}\%$  to overcome it.

Mr. Hagman: Does that mean  $8\frac{1}{4}\%$ , or  $8\frac{1}{4}\%$  in addition?

The Witness: That is to overcome the deficit.

Mr. Hagman: We want to get that clear, whether it is additional or—

The Witness: Yes, they are in addition to what we are already getting. \$41,240, divided by 500,000 cwt.

Q. (By Mr. Jardine:) Now, in those figures for the year 1950 that you have just recited, Mr. Atwood, you have also included in addition to what would normally be required the figure of \$21,715, which you have heretofore given, that would be required to operate that railroad safely during the year 1950? A. That's right.

1170 Q. So in the figures heretofore given that figure or item of \$21,715 is included? A. That's right.

Q. And after 1952, after you have completed, after you have completed this, and assuming that none of these costs for economical operations that you have heretofore recited were incurred, the costs after 1952 would be reduced by \$21,715 each year? A. That's right.

Q. Now your next item in Exhibit No. 37, under normal conditions, means, does it not, the conditions after these expenditures which you have recited that would be necessary in 1950-'51 and '52 had been completed? A. Yes.

Q. And it does not include any of the costs heretofore shown for reasonably economical operations? A. No.

Q. That is your summary of your estimate here in Exhibit No. 37? A. There is also included in this \$23,615 \$1900 of delinquent taxes. It is being presumed that would be picked up in 1950, and therefore it wouldn't go over into the other, and it also wouldn't be in the \$21,715. That is deducted from the \$41,240, which is the deficit before taxes and bond interest.

1171 Q. Well, to revert to your estimated excess of expenditures over revenues for the year 1950 of \$57,440, you have then in one item deducted the extraordinary expenses of \$21,715 and \$1900 delinquent taxes? A. Yes.

Q. Leaving a normal excess of expenditures of \$33,825, then in those expenditures you include the \$9900? A. Yes.

Q. Interest and Bonds? A. Yes.

Q. And you do not include, or you have deducted the \$1900? A. That's right.

Q. The 1900 and interest? A. That's right.

Q. You arrive at a freight revenue required under those figures, additional freight revenue required of 64.3%? A. That's right.

Q. Or 6- $\frac{3}{4}$ c per cwt. in addition to what you are now receiving? A. That's right.

Q. Then if you exclude the \$9900 interest and bonds, the \$6300 in taxes, and the \$21,715 abnormal expenditures or expenditures in addition to the normal that are required in the year 1950, you arrive at a net excess of expenditures over revenue of \$19,525? A.

1172 That's right.

Q. That of course assumes that you don't do any of these things that you state are absolutely required? A. That's right.

Q. It doesn't include either state or county taxes? A. No.

Q. And in that event the increased revenue required would be 37.1%? A. That's right.

Q. Or 4c additional per cwt. required? A. Yes.

Mr. Hagman: That 4c additional required, and the 6 $\frac{3}{4}$ c additional required, shown in line 17, that is, on the assumption that it be made up on grain entirely, isn't it?

The Witness: Yes, it is.

Mr. Hagman: It says Revenue of Grain Required.

Mr. Jardine: Yes, percentage of increase on grain required.

Q. (By Mr. Jardine:) Do you know where this money would come from, Mr. Atwood, to pay these expenditures? A. No, I don't.

Q. Will you tell us the amount of cash you have on hand at this time? A. About \$29,000.

Q. And can you estimate about what cash you will have on hand on January 1, 1950? A. I believe around \$28,000.

1173 Q. And during the months of November and December, are they profitable operating months? A. December as a rule is



not. November may be, but December usually is not.

Q. You figure there will be a loss in your cash position? A. Yes.

Q. And what about after the first of the year, the usual expenses?

A. During the winter months normally there isn't very much revenue. In the last two years, since the Government has been loaning money on grain, those loans expire, as I understand, April 30. After the 30th of April is when it begins to move. Some years, however, some grain moves between January 1 and April 30 that has been stored on the farms. If the farmer has a loan on his grain and the price goes up he sells it and pays off the loan.

Q. Now Mr. Atwood, in estimating the expenditures, did you take into consideration any compensation to the Great Northern for the use of trackage or facilities at Conrad? A. No.

Q. Or payment of any indebtedness except current interest on bonds to the Great Northern? A. I didn't take any of that into consideration.

Q. Or did you take into consideration any return on investment? A. No.

Q. And the figures that you have given are simply the figures of the amount of money that you estimated would be absolutely required in order to operate this railroad for the year 1950? A. That's right.

Q. Does the railroad, so far as you know, have any credit or any way to borrow money? A. They have none.

Mr. Jardine: We offer in evidence Exhibit No. 37.

Exam. Witters: It is received.

(Respondent's Exhibit No. 37, witness Atwood, received in evidence.)

Mr. Jardine: I think that's all.

Mr. Loble: Would you like to go ahead, Mr. Hagman?

Mr. Hagman: Well, I think I asked him questions as we went along.

Mr. Loble: All right.

#### Cross-Examination

Q. (By Mr. Loble:) Mr. Atwood, you said the railroad didn't have any credit. How long have you been with that railroad? A. I have been with that railroad since 1928.

Q. Up to 1948 it had credit, didn't it? A. We were able to obtain money, yes.

Q. The Great Northern Railway advanced money to pay operating expenses and maintenance, or whatever might be necessary to operate this railroad, did they not? A. They furnished materials and billed us for them, and we paid for some of them and some of them we didn't.

Q. Whenever the operating revenue was not sufficient to take care of the operation of this railroad it was taken care of by the Great Northern, wasn't it, you wouldn't be in business today otherwise? A. Yes.

Q. And that started back—

Mr. Hagman: Well, just a moment. What did you mean by "taken care of", in what way?

Mr. Loble: You can ask him. I am satisfied with the answer.

Q. (By Mr. Loble:?) Beginning back in 1923, and before that, you know that the Great Northern was underwriting this company, do you not? A. Yes.

Q. An exhibit was offered in the last hearing in which, I quote from page 276 of the transcript, under date of November 21, 1923, a letter from the Great Northern Railway which is an exhibit? A. Yes.

Q. To the Montana Western, and I read now from the last lines of the transcript. It says: "In a general way, I can say that we expect to see that the Montana Western is taken care of to the extent that it is unable to take care of itself." You are familiar with 1176 that letter, are you not? A. No, I am not.

Q. Well, you observe that, however, in the transcript? (Showing transcript to witness) A. I see that in the transcript, yes sir.

Q. Now, if you will look on page 278 of the transcript, I will ask you if you observe that that letter is purported to be signed by G. R. Martin, Vice-President of the Great Northern Railway? A. Yes.

Mr. Jardine: What page is that on?

Mr. Loble: That is on page 278.

Mr. Hagman: What is the date of that letter?

Mr. Loble: That was 1923, I think November 21. I'll tell you exactly. Yes.

Q. Then I direct your attention to page 279 of the transcript, in which it is stated under date of December 20, 1937 as follows: "In January, 1925, after the Great Northern had declined to accept Col. Stanford's offer of a deed to the Montana Western, the Great Northern agreed to finance the Montana Western for all monthly bills due from the latter to the former, such as coal, rentals, locomotives and car repairs, etc., this being thereafter carried in open account instead of being paid in cash as before."

Mr. Hagman: Mr. Loble, would you just as soon state the 1177 date of the letter, and who wrote it to whom?

Mr. Loble: December 20, 1937, to John H. McMillan Jr., from Mr. R. W. Spier.

Mr. Hagman: Then Mr. McMillan was the President of the Montana Western, and Mr. Spier was the Montana Western's General Manager.

Mr. Jardine: I don't think that's right.

Mr. Young: He wasn't President at that time, McMillan Jr.

Mr. Loble: I am just referring to these things, because all of them are connected up in the transcript.

Mr. Hagman: At the bottom of page 278—this is Mr. Young's testimony—he says, "Now the next thing I found was a letter to Mr. J. H. McMillan, that is the father of John H. McMillan Jr., from R. W. Spier. A. That's right.

Q. Now was this J. H. McMillan to whom the letter was written an officer of the Montana Western at that time? A. Well, I don't know of my own knowledge, but I suspect he was."

Q. (By Mr. Loble:) Continuing then with that transcript, the next paragraph, on page 279, says: "The gross of such credit to September 30, 1937, was \$230,985.10. The payments to the Great Northern from time to time during this period were \$96,506.21, leaving a balance due the Great Northern September 30, 1937 of \$134,478.89." Now I mention these things to you, Mr. Atwood, because I am going to ask you now if it isn't a fact that ever since you have been connected with this railroad whenever money was  
1178 needed for any legitimate purpose for your railroad, even the matter of payroll, you could and did, if necessary, obtain it from the Great Northern? A. That's right.

Q. And the various sums that were obtained from the Great Northern over this period of years were carried as an indebtedness against the Montana Western, were they not? A. They were.

Q. And this practice continued throughout all of the years that you were connected with the railroad up to about the year 1948, when that arrangement or relationship between the Great Northern and the Montana Western was terminated, is that right? A. That's what I understand.

Q. And that relationship, so far as you know, was terminated, or the relationship expired, I might say, by reason of the fact that the Montana Western Railroad had refused to renew the mortgage indebtedness payable to the Great Northern? A. That's the way I understand it.

Q. And prior to that relationship being terminated you had correspondence with a Mr. Seyton of the Great Northern, did you not? A. I did.

Q. Did you know him personally? A. Not until that correspondence. He came out to Valier to look over the tracks, the first time I met him.



1179 Q. Now, that correspondence, what is referred to as the Seyton correspondence here, started about the year 1947 or before that? A. I don't remember the year it started.

Q. At any rate, I will ask you if this isn't a fact, if that correspondence was the beginning of negotiations between the Great Northern and your company for an eight-year rehabilitation program of your railroad? A. I don't know what took place between the officials of the two roads. I couldn't tell you that. The only thing I could tell you is that a Mr. Seyton came out and we went over the track, and what he said.

Q. Now, Mr. Seyton came out and went over the track and went over the physical condition of this railroad, did he not? A. He did.

Q. And you went with him, did you? A. I did.

Q. And at that time he was the chief engineer, as far as you knew, of the Great Northern? A. That's right.

Mr. Loble: I guess he still is, as far as I know. Is Mr. Seyton still with the Great Northern?

Mr. Hagman: He was four or five days ago when I left St. Paul.

Mr. Loble: Well, that's a very correct answer.

1180 Mr. Hagman: Oh, I'm sure it's correct.

Mr. Loble: Up to four or five days Mr. Seyton was the chief engineer of the Great Northern, or identified at least with the Great Northern as chief engineer?

Mr. Hagman: Yes.

Q. (By Mr. Loble:) Now, did anyone come with Mr. Seyton, any other officials, when you worked on this rehabilitation program? A. I wouldn't, they wouldn't hardly be classified as officials. There were some other employees of the Great Northern.

Q. Who were they, if you remember? A. There was the general roadmaster from Spokane, and division roadmaster from Great Falls, and there was another gentleman that I don't know what his position was.

Q. Do you recall the names of these gentlemen, any of them? A. O'Connor is the one from Great Falls. I can't recall the name of the general roadmaster from Spokane.

Q. Now, how long were they there? A. A day.

Q. And did any of them come back? A. Mr. O'Connor and the general roadmaster came back later.

Q. How long was he there? A. Well, he was there only half a day.

Q. Did you furnish statistical information to them, either in writing or verbally, at that time? A. Not at the time of that

1181 visit, no.



Q. But you did furnish information to them in reference to the road, any information they wanted to have? A. That's right.

Q. And they wanted some, didn't they? A. Certainly.

Q. They were men skilled in railroad construction and railroad building, were they not, as far as you knew? A. Very much so, I believe.

Q. After this had taken place were you informed that there was to be a rehabilitation program on your railroad by the Great Northern over an eight-year period that was to cost approximately \$171,000?

Mr. Hagman: Does that program say rehabilitation program by the Great Northern?

Mr. Loble: Yes.

Mr. Hagman: I think you should clarify that. Do you mean the Great Northern was to pay for it all?

Mr. Loble: The Great Northern was to advance whatever sums were necessary to pay for the rehabilitation program.

Mr. Hagman: You are assuming that in your question now?

Mr. Loble: Yes, that's right. A. From my own knowledge I can't say that was the trip, but during the trip with Mr. Seyton I asked him where the money was coming from to pay for this program. He says, "You will get it out of your revenue, out of 1182 your income." Well, I didn't think much of a program would be put across under those conditions. I didn't say anything, so I never found out personally who was going to back this up. I don't know.

Q. But you knew that your income wouldn't do it? A. Well, as far as I could see it wouldn't.

Q. As a matter of fact, in the year 1948 the program called for \$28,000 of expenditure on the line? A. That's right.

Q. And as a matter of fact \$17,000 was actually spent, was it not? A. That's right.

Q. Who advanced that money? A. We paid for it out of our income, and what became of the financial transaction to cover it I don't know.

Mr. Hagman: Well, just a moment. You say who advanced that money. Was that an advance in cash or was it material and supplies, or just what do you mean by that?

The Witness: Well, that would be in material and supplies, if you are asking me the question.

Mr. Hagman: The question was in regard to advances.

Mr. Loble: I think we'd get along much better if you would let me finish my cross-examination and then you cross-examine.

Q. (By Mr. Loble:) The \$17,000 was represented by supplies furnished to you by the Great Northern? A. We obtained the 1183 supplies that were required from the Great Northern.

Q. Did you pay for those in cash? A. No, not that I know of. Now I am not connected up with the general office and what they do over there is something that I don't know about always.

Q. Did you have on hand then sufficient money to pay the ordinary operating expenses and pay off \$28,000 of expenditures? A. No.

Q. As a matter of fact you didn't have enough money to pay operating expenses, did you? A. Not all the time, no.

Q. Now then, that rehabilitation program collapsed when negotiations collapsed between the Montana Western and the Great Northern whereby the Montana Western refused to renew its mortgage, didn't it? A. That's what I understand.

Q. Now, in your present setup here, and under your present plan that you have advanced here in connection with these various exhibits, have you utilized the information that you have acquired from the rehabilitation plan of your railroad and the Great Northern? A. Which exhibit, may I ask?

Q. All of them or any of them. All of them. A. Exhibit No. 33, that is a continuation of that plan.

1184 Q. Now, in Exhibit 33 you have ballast, \$48,000? A. Yes.

Q. Over what period of time do you charge that to the railroad?

Mr. Hagman: Do you charge it? Has that been incurred?

Mr. Loble: No, it hasn't been incurred.

Q. (By Mr. Loble:) Let me ask you this: does the \$48,000 for ballast make up a part of Exhibit No. 37, line 1, estimated cash expenditures over the year 1950? A. No.

Q. It does not? A. No sir.

Q. Where is the \$48,000 for ballast charged into this program?

A. It is not in the estimate for 1950 or '51 or '52. It is not in any of those items. It is an item there that for economical operation should be put into effect, but no program has been undertaken to date.

Q. Now the \$113,948 includes all the items? A. It includes maintenance of way and structures.

Mr. Hagman: Well, it is taken off the last line in Exhibit 34, isn't it?

The Witness: Yes, the last line Exhibit 34.

Q. (By Mr. Loble:) All right. Exhibit 34 covers the amount of repairs and expenses you estimate? A. Yes sir.

Q. To be done in 1950, that's right? A. That's right.

1185 Q. And do you have any ballast in there? A. No.

Q. As a matter of fact the road has existed all these years the same way it is now, has it not? A. That's right.

Q. And was ballast considered feasible in the Great Northern's rehabilitation program? A. Yes.

Q. In other words, it would be nice to have and desirable to have if you could afford it? A. That's right, from an economical standpoint, it would save money.

Q. You say this is what has to be done in 1950. Did you in any previous year of this company conduct a program comparable to this one? A. You mean on this estimate?

Q. Yes.

Mr. Hagman: What do you mean by "this program"? The record won't show.

Mr. Loble: Comparable to what is set up in Exhibit No. 34. A. We did put in 7500 ties one year. After the war we were in pretty bad shape and we never have caught up, and we have got to catch up if we are going to continue.

Q. (By Mr. Loble:) After world war 2 you refer to? A. 1186 That's right.

Q. Well, there isn't any year within your knowledge of the Montana Western where as extensive and expensive a program in one year has been put into effect as that which you have set out for the year 1950? A. Well, it's been as extensive in some years but not as expensive, on account of the cost of materials and labor.

Q. In what year would you say that you ever put on a program as extensive as that? A. I don't remember the year. I'd have to look that up, but I know that we have put on extensive programs, as many men hired as we have here.

Q. More than once during your experience, Mr. Atwood? A. Yes.

Q. And when? A. Oh, I would have to look that up, Mr. Loble. I don't want to commit myself on it.

Q. And those programs that were put on before, whatever years they were, were put on under the arrangement that you have heretofore mentioned that existed between the Great Northern and the Montana Western? A. That's right. May I say something here?

Q. Yes. A. There is an item, two items here, or one item.

Mr. Hagman: On what exhibit?

1187 The Witness: On Exhibit 34, on the last page, the Dry Fork Bridge. That's never been in before to that extent, but that is due to the flood of 1948, and it will have to be fixed.

Q. (By Mr. Loble:) That is something additional, is it not? A. That's right.

Q. And the roundhouse, is that involved in this? A. No, not for 1950.

Q. Now, on your income, referring to Exhibit No. 36, you have got the average tons of grain shipped for 1939 to '48, you give an average of 25,774, that's correct, is it not? A. That's right.

Q. You say that's about 500 cars? A. That's a little better than 500 cars, yes.

Q. Now, you heard Mr. Kingsbury testify, did you not? A. Yes sir.

Q. And you heard him say that for August, September and October and I believe November, or a part of November, there were 500 cars shipped out over your road in 1949? A. That's right.

Q. That's correct, is it not? A. Yes sir.

Q. How much is the total number of cars that will be shipped out over your road for 1949 if you had 500 for those four months?

A. 500 for which four months?

1188 Q. 500 for the four months that he mentioned. A. I don't know. I'd have to look my record up on that.

Q. Have you the record? A. I haven't the record here, no.

• Mr. Hagman: Mr. Loble, I am not objecting to anything; but I just want to call your attention to the fact that the Great Northern traffic witness has a statement of the actual number of cars by commodities that moved in and out of this railroad for a number of years. That is taken from the record, and I am telling you so you can be advised of that.

Mr. Loble: Thank you. I will modify my examination then.

Q. (By Mr. Loble:) I see that from January 1 to October 31, 1949, products of agriculture were shipped, 33,730 tons, I believe you gave that figure? A. Yes.

Q. Now that is from January 1 to October 31, 1949, is that right? A. Yes.

Q. As against the average on Exhibit 36 from 1939 to 1948 of 25,774, and from 1934 to 1948 an average of 23,586, you know that? A. I know that.

Q. You don't dispute the fact that the number of cars during 1949 has been an increase over the averages I mention? A. Yes, I noticed that. That is 1948 and '49 moving together.

1189 Q. Is this the first time that has occurred? A. No, we have had it before. We had it in 1928. 1927 and 1928 moved all in one fall.

Q. Yes. There has been very little change in the tonnage of grain shipped out, according to Exhibit 36? A. That's right.

Mr. Hagman: Do you mean there has been very little fluctuation from year to year?



Mr. Loble: That's right.

The Witness: There is quite a fluctuation here between 1935 and 1936.

Mr. Loble: Where?

Mr. Hagman: 9826 tons seems to be the lowest, but it goes up as high as 39,000 one year.

Q. (By Mr. Loble:) Why was it 9826 in 1936, do you know? A. No, I couldn't tell you that.

Q. No crop? A. Might be, but I don't know.

Q. 1947 was the peak year in tons shipped, wasn't it? A. Yes sir.

Q. What was the tonnage in 1948? You don't have it there? A. Yes. 21,829.

Q. Oh, yes, I see it. And 1949 will be how much? A. 34,500 by the end of the year.

Exam. Witters: Was that grain alone or—

1190 The Witness: That is products of agriculture, and this is grain.

Mr. Hagman: Well, now, let's get this straight.

Mr. Loble: I am talking about grain. I am looking at Exhibit 36.

Exam. Witters: Nothing on grain alone?

The Witness: I haven't.

Q. (By Mr. Loble:) This figure you gave us, 33,730, that I gave you moment ago— A. That is products of agriculture.

Q. That is not grain alone? A. That is not grain alone.

Exam. Witters: Do you have the figures on grain up to the end of November?

Mr. Loble: No, to the end of September.

Q. (By Mr. Loble:) There isn't very much difference then in the averages of tons of grain shipped out over the years, is there? A. I don't understand.

Q. There isn't very much difference in the averages that you have set up here on your Exhibit 36? A. You mean between these two averages?

Q. Yes. A. No.

Mr. Jardine: You mean between the one period which is 1191 a 10-year period and the other, which is a 15-year period?

The Witness: No.

Q. (By Mr. Loble:) And if you put 1949 in there when you get through there still won't be very much difference in the averages, will there? A. No, there won't.

Mr. Hagman: Do you know what the 1949 figure is going to be?

Mr. Loble: Well, let me finish my cross-examination and then you can examine him. I can't examine the witness with somebody interrupting all the time.

Q. (By Mr. Loble:) There won't be very much difference, so far as you know, in the average after you get 1949 in? A. That's right.

Q. The difficulty here isn't in the fact that the shipment of grain over a period of years averages less, that isn't the difficulty, is it? It is in your increased cost, isn't it? A. That's correct.

Q. It has been testified here there are about a million bushels of grain a year, Mr. Swanson said about a million 200,000, along this line. You don't dispute that, do you? A. I think an average of a million 200,000 is high.

Q. All right. What do you say it is along the line of the Montana Western? A. Bushels, he said, didn't he?

1192 Q. Bushels, yes. A. That's pretty high.

Q. Would a million be close? A. A million would be closer.

Mr. Hagman: Well, to save time, would you develop what you mean, what territory you cover?

Mr. Loble: I will develop it the way I want to, and then you can do what you like about it.

Q. (By Mr. Loble:) Now you have a million bushels of grain along this line, the line of the Montana Western, a year, is that right? A. About that.

Q. Now that has been pretty consistent during all of the years, has it not?

Mr. Hagman: As shown by this Exhibit No. 36? A. Let me see. Yes. Let's see here. The average of 25,000 tons, 500 carloads, that would be 850,000 bushels. That would be the average as shown on this. Does that answer your question, sir?

Q. I think it does. There is very little difference in the condition of the Montana Western now and what it's always been, except that now the Great Northern makes the advances, is that right? A. You mean the financial condition?

Q. Yes. A. That's right.

1193 Q. So far as tonnage is concerned it is substantially the same, isn't it? A. Yes sir.

Mr. Loble: I believe that's all.

Mr. Jardine: I wonder before we go any further if I could ask a couple of questions on direct that I overlooked, not with reference to this but with reference to some questions that came in yesterday with reference to an agreement between the maintenance of way men and the Montana Western Railway Company.

#### Redirect Examination

Q. (By Mr. Jardine:) You heard Mr. Lots testify yesterday with reference to an agreement between the maintenance of way men and the Montana Western? A. I did.

Q. Is there any agreement between the maintenance men on the Montana Western and anybody that you know of other than their agreement to receive salary from the Montana Western? A. None.

Q. Have you ever been approached on any agreement? A. I never have.

Q. Do you know anything about any negotiations? A. I know the General Chairman of the Union in St. Paul approached Mr.

McMillan, Mr. McMillan turned the letter over to his labor relations man, the labor relations man sent it to me, where this General Chairman wanted to know about organizing the employees in maintenance-of-way on the Montana Western, and he wanted to know how many we had. He said the maintenance of way employees had sent in a request to the Union to become a part of the Great Northern setup.

Mr. Hagman: By setup, you mean the Great Northern's contract with its men?

The Witness: That's right. And I went to the men and they said they had made a list of the men and sent it in, the men who were employed by the Montana Western on maintenance of way, and sent it in to the Union, with the intention of joining the Union but not with the intention of advocating a contract between the Montana Western and the Union for employment. So I sent this back to Mr. McMillan, or the labor relations man, and I haven't heard anything from it since.

Q. (By Mr. Jardine:) Have the men said anything to you since? A. No.

Q. And so far as you know is there any contract? A. None.

Q. Wouldn't you know about it if there was? A. I believe I would.

Q. You are the superintendent operating there, are you not? A. Yes sir.

Q. Now, with reference to the operating men, that is the 1195 trainmen, did any of those trainmen ever approach you? A. Never did.

Q. Do you know whether they have made any endeavor to have a like contract entered into? A. No, they haven't.

Q. Did you ever hear of it before until Mr. Lots mentioned it the other day? A. No, I did not.

Exam. Witters: Are the non-operating employees, which includes the maintenance-of-way men, on a five-day week?

The Witness: Yes, they are.

Mr. Loble: May I ask a question or two further?

Exam. Witters: Yes.

## Recross-Examination

Q. (By Mr. Loble:) Mr. Atwood, you were asked by Mr. Hagman in reference to a grade out of Valier? A. Yes.

Q. There is a grade there, is there not? A. There is.

Q. And do you recall having told Mr. Kingsbury that that grade could have been reduced at an expenditure of about \$800 at one time? A. That's true, but it couldn't be now.

Q. Now it would cost more? A. Yes sir.

1197 Q. But as a result of that grade there you start up a hill with this train and take two or three shots with it, don't you? A. Sometimes. Sometimes we get up, sometimes we don't.

Q. And taking these extra shots at it costs you a little money, doesn't it? A. That's right. It decreases the load, the load we can take out of Valier. If we don't happen to have loaded cars at Williams and Manson then all we can take is what we can get out of Valier with.

Q. Yes. A. And that means that all we get into Conrad is what we get out of Valier with.

Q. Now, on your coal, I see you are talking about a loader, is that right? A. That's right.

Q. Explain the process now. Let me ask you this: isn't this the process now: the coal comes in and you have a crew unload it onto the ground or a platform? A. I pay a dollar a ton on contract to unload it.

Q. You pay \$1.00 a ton to unload it? A. Yes sir.

Q. And the labor is supplied to you? A. The contractor supplies the labor.

Q. Is that a local contractor? A. Yes, it is an individual  
1197 who contracts to unload it.

Q. Now that individual, together with whatever assistance he needs? A. That's right.

Q. You pay \$1.00 a ton? A. That's right.

Q. They unload it onto the ground? A. Onto a temporary platform we have there.

Q. All right. Then the engine comes up, is that right? A. That's right.

Q. And then it is loaded onto another platform, is it not? A. The section crew then shovels it up onto a platform. The top of the tender is 11 feet above the rails. Then they shovel it again from this platform, elevated platform, into the tender.

Q. Now, the section crew you pay how much? A. \$1.27 an hour.

Q. And how many men do you generally use to load it onto the platform before it gets into the tender? A. 4 to 5.



Q. And after they have loaded it onto the platform then these 4 or 5 men of the section crew go onto the platform and load it up higher into the tender, is that right? A. That's right.

Q. And they continue to draw that kind of wages during 1198 that time, I suppose? A. The same wages they would in the track.

Q. And while they are doing it the fireman and the engineer are sitting in the engine drawing pay, are they not? A. That's right. You can't dispose of them until you get it into the round-house.

Q. And that has been the practice for all of these years? A. Until the Valier Company get their backfiller overhauled, which is a variable date. They use this backfiller in cleaning ditches in the summer. It comes in in the fall when the weather freezes up and they put it in for overhauling to get it ready for the next spring's work. As soon as they get that overhauled then we move it up and use it as a crane to lift the buckets. Now that date may be December 31, it may be January 15, or January 31. It is problematical. It depends upon when they get through.

Q. How long do you have the use of it? A. Until the weather opens up in the spring, probably along about the 1st of April.

Q. And what does that eliminate in labor cost? A. That eliminates, they can fill that tender, one man, two men can, with those buckets in about an hour and fill the buckets for the next load.

Q. How does that compare with the other procedure of the section men doing it? A. It takes about three hours.

1199 Q. How many men? A. Five men and a foreman.

Q. Now, on your locomotive No. 10, that is an old locomotive, is it not? A. It is.

Q. And is in constant need of repair? A. Not constant, no.

Q. It is an expensive piece of equipment to operate? A. It is.

Q. Do you rent equipment from the Great Northern? A. When we have to.

Q. And that is at how much per day? A. \$35.00 a day.

Mr. Hagman: What kind of equipment?

The Witness: Engine.

Mr. Hagman: What type of engine?

The Witness: 500 class.

Mr. Hagman: Steam?

The Witness: Steam.

Q. (By Mr. Loble:) And pay \$35.00 a day? A. \$35.00

Q. Oh, \$35.00. Pardon me. And how much of the time do you use that, roughly, would you estimate? A. Oh, on the average I'd say it would be about three weeks a year.

1200 Q. Is it cheaper for you to rent this piece of equipment

from the Great Northern than it is to run No. 10? A. Well, No. 10 is out of commission when we rent from the Great Northern.

Q. But do you find that it is cheaper to rent the equipment from the Great Northern than to operate No. 10? A. No.

Q. The other way around then? A. Yes sir.

Mr. Loble: I think that's all.

Exam. Witters: Any further cross-examination?

Mr. Jardine: We have nothing further.

Exam. Witters: Excused.

(Witness excused.)

Mr. Jardine: We have nothing further to offer. We rest our case.

Mr. Hagman: May the Great Northern proceed then?

Exam. Witters: Yes.

Mr. Hagman: Would you care to adjourn and start a little earlier after lunch. It is 12:15. It's all right with us.

Exam. Witters: Do you prefer to do it that way?

Mr. Hagman: I think it would be better. We could go right on with it then.

Exam. Witters: Do you wish to continue at 1:30 or 2:00?

1201 Mr. Hagman: Let's make it 1:30. I'd like to finish this afternoon.

Exam. Witters: All right. 1:30. We will recess the hearing now and resume at 1:30.

(Whereupon, at 12:15 p.m., the hearing recessed until 1:30 p.m.)

#### AFTERNOON SESSION.

Exam. Witters: You would like to recall Mr. Stevenson, Mr. Loble?

Mr. Loble: Yes, we want to recall him.

LESTER STEVENSON, having been previously sworn, was recalled and testified further as follows:

#### Direct Examination

Q. (By Mr. Loble:) Mr. Stevenson, you were heretofore a witness in this case, were you not? A. Yes sir.

Q. You testified in reference to mustard seed, did you not? A. Yes.

Q. Will you tell us what area is the greatest producer of mustard seed in the world? A. The area up there between Pondera and Glacier and Toole Counties, I think, produces more than any other place in the world.

Q. Your elevator is located at Manson? A. Yes.

1202 Q. And you heretofore testified that is, where you ship from? A. Yes, from Manson.

Q. And that location covers what is known as the triangle, is that right? A. Yes, that's right.

Q. And the triangle, I believe you said, is the greatest producer of mustard seed in the world? A. Of any one place, yes.

Q. You have the figures there for the northwest. Will you detail those? A. Oh, I have a late report from the United States Department of Agriculture, November 18, 1949.

Q. Will you give us those figures for Montana. A. For Montana, from '43 to '47 the raised 25,500,000 pounds a year; in '48 they raised 18,300,000 pounds; in the year '49 they raised 8,700,000 pounds. This condition is more or less due to the world situation, the decrease in the tonnage, which will come back in the picture again in the years to come. Most of the farmers now have tried to build up their wheat acres so that under the allotment program they will have a larger wheat acreage. Mustard seed is not considered in the wheat program, though they can plant whatever acres they want into mustard, or their idle acres into mustard, which will create a bigger crop of mustard in the next few years again.

1203 Q. Have you the figures for nearby states in the production of mustard seed? A. Yes. California in '43 to '47 averaged 2,232,000; in '48, 700,000; in '49 2,100,000.

Exam. Witters Pounds?

The Witness: Pounds, yes. In the three states of Oregon, Washington and North Dakota their average for '43 to '47 was 1,602,000 pounds; '48, 480,000 pounds; and '49, 500,000 pounds.

Q. O.K. Does that complete your record? A. Well, yes, mostly, I think. There is something about import seed coming in, imported. During 9 months ending September, there were 5,872,000 pounds imported this year compared with 7,275,000 pounds a year earlier and 4,779,900 pounds the two years before that. Well, through the war years we had a high market here, which encouraged planting in Europe, which I think is not going to affect us much any more.

Q. Is this area known as the triangle particularly adapted to the growing of mustard seed? A. Yes, it is. It is the best in the United States.

Q. Thank you. Yesterday something was said about you transporting from Sweetgrass by truck? A. Yes.

Q. Is that a short haul by train? A. No. We asked for a cleaning-in-transit rate, which we never did get from the  
1204 Montana Western?

Q. You couldn't get it from the Montana Western? A. We never have been able to.

Q. You have such a rate from the Great Northern, have you? A. Yes. It is effective up to Conrad, then when we go in and come back out that costs us I think 14c a cwt. for that short haul, the rate.

Q. It costs you that to go from Conrad to Valier? A. From Conrad to Manson.

Q. That distance from Conrad to Manson is what? A. 7 miles.

Q. It costs you what? A. 7c a cwt.

Q. That is beyond the capacity of your product to pay, is it? A. Well, yes, it runs extra because we go in and come back out.

#### Cross-Examination

Q. (By Mr. Jardine:) Well, you do ship mustard out, don't you? A. Yes, we do.

Q. And you do pay 7c a cwt.? A. If the transit was set up our rate—

Q. I understand that, but you do ship it out from Manson and pay 7c a cwt.? A. Yes.

Q. They grow a lot more than enough mustard seed in 1205 this area than can be used in the preparation of prepared mustard that they use like on hot dogs, there is more than enough grown up here to supply the whole world, isn't there? A. Well, there are other uses than that.

Q. I know, but I am just asking you if they grow more than enough to supply the market for use in prepared mustard? A. I wouldn't know.

There is a lot of oil, marine oil, crushed in mustard, but most of the yellow mustard is made into prepared mustard, which is our biggest crop.

Mr. Jardine: I think that's all.

(Witness excused.)

Mr. Loble: May I clarify one thing with Mr. Entorf on direct?

Exam. Witters: Yes.

PAUL ENTORF having been previously sworn, was recalled and testified further as follows:

#### Direct Examination

Q. (By Mr. Loble:) Mr. Entorf, yesterday when you were talking about the Farmers Union elevator that burned down and you sold for salvage a certain part of the grain and moved it, the purchaser moved it to Sims by truck? A. Yes.



Q. If that had been moved by rail what rate would it have  
1206 had to take, and would that rate have been feasible? A.

Well, it would have had to go on to Conrad probably and then into Great Falls and back out from Great Falls to Simms again, and also that grain was damp, that grain was wet. Now this farmer, a farmer bought it, he don't live right in Simms, he lives out of Simms, and he bought that grain there in the pile as it was, there were loading facilities there for him, a quick deal, to be exact. Well, that man is a cattle feeder. He handles livestock, he trucks livestock, he owns trucks, and if he owns those trucks which were capable of moving that grain then if he has a man hired and has the time to do it that would be the logical thing for him to do, to make use of his own facilities to a large extent.

Mr. Examiner, may I insert one little detail in here, please?

Exam. Witters: Well, if you think it is pertinent.

The Witness: Well, there was quite a bit of discussion yesterday on the country lying east of Conrad as far east as Big Sandy. There's going to be quite an irrigation project going in between Chester and Big Sandy.

Mr. Jardine: That is north of the Marias River?

The Witness: No, south. Well, I don't know whether it's north or south, but it's near Big Sandy.

Mr. Loble: Well, would you say it is a comparable territory?

Mr. Jardine: I have never been in that territory north, I  
1207 have been in the territory east of Brady and south of the Marias River, but I have never been in the territory north.

The Witness: Well, I just put it in for what it is worth.

(Witness excused.)

Exam. Witters: You may proceed, Mr. Hagman.

E. F. McGUIRE was sworn and testified as follows:

#### Direct Examination

Q. (By Mr. Hagman:) Will you state your name and place of residence? A. My name is E. F. McGuire, St. Paul, Minnesota.

Q. And what is your position with the Great Northern Railway Company? A. I am Commerce Agent of the Great Northern Railway Company, with headquarters at St. Paul.

Q. How many years of experience in traffic work with a railroad have you had? A. Approximately 27 years.

Q. With what different railroads? A. The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, commonly known as the Soo Line, and with the Great Northern Railway Company.

Q. How many years have you been in the Great Northern traffic department? A. I have been in the Great Northern Traffic department for approximately 12 years.

1208 Q. And, very briefly, what has been the nature of your work? A. The nature of my work has had to do with rates, through analyses, and additionally, all that period, in traffic work, 12 years of it, was in the matter of negotiating and arranging divisions of joint rates with other railroads.

Q. Have you made an investigation of the situation in divisions and the traffic interchange between the Montana Western and the Great Northern? A. Yes, I have.

Q. We have some exhibits here, marked for identification 38 to 47, inclusive. Were these prepared under your supervision and direction? A. They were prepared by me personally or under my supervision and direction.

Q. And is the information contained in them true and correct to the best of your knowledge and belief? A. It is.

Q. Now will you please take those exhibits in the order in which they have been numbered, and make such explanation of them as you think is necessary? A. Exhibit No. 38 is a map of the United States, with the Great Northern Railway appearing on it in red. The Montana Western Railway also appears in black, as shown, extending from Conrad to Valier in the State of Montana. The map illustrates the extent of the Great Northern Railway 1209 hauls with grain and mustard seed or any other commodity which is interchanged with the Montana Western Railway service, generally embracing the whole area from Conrad to our eastern terminals, Duluth, Superior, the Twin Cities of Minneapolis and St. Paul, as well as Sioux City, and to the west to Everett, Seattle, Tacoma and Portland.

(Respondent's Exhibit No. 38, witness McGuire, marked for identification.)

Q. Well now, I expect that later on in your testimony you will use the terms "eastern terminals" and "western terminals". You might as well at this time define those terms. A. The eastern terminals of the Great Northern, as the term will be used by me later on, in my testimony, are Duluth, Minnesota; Superior, Wisconsin; Minneapolis and St. Paul, Minnesota; Sioux City, Iowa; and all stations in the States of Minnesota, North and South Dakota, served by the Great Northern Railway subject to the same rates. And the western terminals of the Great Northern Railway as they will be referred to by me are stations on the Great Northern main line west of Spokane from Wenatchee to and including Everett, Seattle, Tacoma, Portland and other stations in Oregon and Washington subject to the same rates.

Q. Now will you explain Exhibit No. 39. A. Exhibit No. 39 is a sectional map showing principally the State of Montana and the railroads within Montana. The Montana Western Railroad is shown on that map, and the two terminals of that line are encircled in red, that is Conrad and Valier. The map is for convenience in locating Montana stations as distinguished from the United States map.

(Respondent's Exhibit No. 39, witness McGuire, marked for identification.)

Q. Exhibit No. 40. A. Exhibit No. 40 is a list of stations on the Montana Western Railway and their respective distances from Conrad, Montana, the first station west of Conrad being Manson, and 7 miles from Conrad. The western terminal of the Montana Western is Valier, 20 miles from Conrad, illustrating a Montana Western minimum haul of 7 miles, and a maximum haul of 20 miles.

(Respondent's Exhibit No. 40, witness McGuire, marked for identification.)

Q. Now, these mileages were taken from this tariff that you assigned? A. Yes sir, they are the authority for the distances that are shown on the exhibit.

Q. And are those the distances you used then in subsequent calculations in your exhibits? A. They are.

Q. Now, Exhibit 41. A. Exhibit No. 41, consisting of 4 pages, is a statement of the revenue on carloads of commodities originated on the Montana Western interchanged to the Great Northern at Conrad for the calendar years of 1946, '47, '48 and the first nine months of 1949. These commodities are shown by cars and by the billed weight with the points of origin and the billed destinations. The exhibit additionally shows, taking the year of 1946, that of the total originated revenue, carloads, take grain, which includes wheat and barley, as to the total number of cars, which was 711, approximately 90.6% were grain. As to the weight, for the year of 1946, grain would be 96.2% of the total originated weight handled by the Montana Western. Taking grains, flax seed and mustard seed, the number of cars were 94.1% of the total originated. The weight was 98.63% of the weight originated.

(Respondent's Exhibit No. 41, witness McGuire, marked for identification.)

Mr. Loble: Where is that figure?

Mr. Hagman: That is calculated. It isn't in here.

The Witness: You can get it just by adding the percents together for those three commodities.

Mr. Loble: Grain?

The Witness: Grain, flax seed and mustard seed.

Q. (By Mr. Hagman:) Then page 1 of Exhibit 41 covers the year 1946? A. That is right.

1212 Q. And shows the total outbound number of cars, 711? A. That is right.

Q. And as to weight, 96.2% of all the outbound weight constituted grain? A. Grain, or specifically wheat and barley.

Q. Yes. Now the other sheets, sheet 2 is the same information for 1947? A. That is right.

Q. Sheet 3 is the same for 1948? A. That is right.

Q. And sheet 4 is the same for the first nine months of 1949? A. That is right, and in each of the periods shown in this exhibit grain, flax seed and mustard seed, either as to the number of cars or the weight, constitute better than 90% of the total originated revenue carload traffic.

Q. Now your Exhibit No. 42? A. Exhibit No. 42, consisting of four pages, is a statement of revenue, carloads of commodities interchanged to the Montana Western Railway at Conrad and terminating on that line. This exhibit lists by commodities the number of cars, weight in pounds, origins and destinations of the traffic terminated on the Montana Western for the calendar years 1946, '47, '48, and the first nine months of 1949. Page 1 is for the year of 1946, and shows 46 inbound revenue carloads. Now since I prepared this exhibit I have found out that 6 of the carloads of coal originated at Giffen, Montana, were Montana Western com-

1213 pany material, so the revenue carloads would only aggregate 40 in the year of 1946. Page 2 is the same information for the year of 1947, and with respect to the coal, 2 carloads originating at Giffen and 2 carloads originating at Cascade were company material, company coal of the Montana Western, therefore in 1947 the total revenue carloads terminated on the Montana Western should be 77 instead of 81.

(Respondent's Exhibit No. 42, witness McGuire, marked for identification.)

Mr. Hagman: Just a moment. Off the record.

(Discussion off the record.)

Mr. Loble: How is that carried, without a charge?

The Witness: Without a charge for whom?

Mr. Loble: To the Montana Western?



The Witness: I don't know. The practice on the Great Northern on the handling of company material way bills is to handle them without charge, but we pay the charges to our connecting lines that handle the material up to our connection and we collect freight charges on this coal for our service to Conrad.

Q. Well, Mr. McGuire, the point of these things you are calling attention to now is that this exhibit covers revenue freight of the Montana Western? A. That is right. It is only intended to cover revenue freight.

1214 Page 3 shows the information for the calendar year 1948.

Similarly, I now find that 1 car of coal from Roundup and 2 cars from Cascade were Montana Western Company coal, therefore the total revenue carloads inbound for the year of 1948 should be 44 rather than 47.

Page 4 is the same information for the first nine months of 1949. All of the coal shown on that page, or 5 cars from Cascade, were Montana Western Company coal. Therefore the first nine months of 1949 total inbound revenue cars should be 39 rather than 44.

Q. All right. Now will you take up your Exhibit No. 43. A. Exhibit No. 43, consisting of 3 pages, of which page 1 is a recapitulation of forwarded and received revenue carload freight interchanged with the Montana Western by commodities, and on this first page of the exhibit we have shown the ratio of each commodity by cars, as well as by weight, to the total for each of the years and the first nine months of 1949, and at the extreme right of that page the same information for the total 3-year and 9-month period.

Q. And the ratio is the total of the inbound and outbound as shown in the previous exhibits? A. That is right, and incidentally I have not corrected the exhibit to eliminate this company coal, company coal cars, therefore the percentage of grain, flax seed and mustard seed to the totals would be slightly greater than that shown here. As an example, in 1946, Lines 1, 2 and 3 showing grain, flax seed and mustard seed total revenue cars handled by the Montana Western, those three commodities consisted of 88.77% as to total cars; weight, the same three commodities, 94.95% of the total. The information is detailed in the same manner for the years '47, '48, and the first 9 months of 1949. The aggregate for the three years and nine months, those same three commodities, of course, 87.31% of the total.

(Exhibit No. 43, witness McGuire, marked for identification.)

Mr. Loble: Where is that figure, over in the last column?

The Witness: That is right. The totals shown on Line 29 of page 1 give you the total number of revenue cars for each of the periods.

and the aggregate for 3 years and nine months. The weights are also shown. The weight for the first nine months of 1949 is 95.01%.

Q. (By Mr. Hagman:) Well now, look at that Line 29, near the end of it is the figure 2829 cars inbound and outbound over the Montana Western, is that right? A. That is right.

Mr. Loble: For the three years and nine months?

The Witness: Yes sir.

Q. (By Mr. Hagman:) For the three years and nine months there were 2829. Now if you divide that figure by the number of days in those three years and nine months, what will be the 1216 average number of carloads of revenue freight that move over the Montana Western per day? A. 2 cars a day on an average, that is inclusive of inbound and outbound revenue freight.

Q. So that if the traffic moved in the same proportion each day of the year there would be 2 cars of revenue freight per day over the line? A. That is right.

Q. On Exhibit 43 did you give the percentage that grain, flax seed and mustard seed is of all tonnage interchanged? A. Yes. For the three-year and nine-month period the record will show it was 93.74% by weight.

Q. All right. Now page 2 of your Exhibit 43? A. Page 2 shows for the same commodities, and incidentally the line numbers on page 2 identify the same commodities in the same order as they appear on page 1. This page of the exhibit recapitulates forwarded and received revenue carload freight interchanged with the Montana Western by commodities, and shows the ratio of each commodity state versus interstate for each of the years and the first nine months of 1949, and the aggregate for the three years and nine months. The showing is best illustrated by looking at the totals on Line 29, which for the year of 1946, of the total revenue freight handled, 96.6% was interstate and 94½% of the total handled was grain, flax and mustard seed, which indicates 1217 that other revenue freight other than those three commodities, or 2.1%, comprised the balance of the revenue from interstate freight in that year. In 1947 96% of the total pounds of revenue freight handled was interstate, 4% intrastate.

Q. And when you say handled, that is equivalent to interchanged, isn't it? A. That is right.

Q. Because there is no local movement to speak of on the Montana Western? A. I have no knowledge of freight traffic on the Montana Western of local movement.

In the year '47 I said 96% was interstate. 93.2% of the total revenue freight tonnage was grain, flax and mustard seed in interstate commerce. Other revenue freight interstate was 2.8%. In 1948 93.2% of the total revenue freight was interstate, and of

that 90.2% of all revenue freight was interstate grain, flax and mustard seed, 3% being other freight. Nine months of 1949, 96.6% of the revenue freight interchanged by the Montana Western was interstate, and of the total revenue freight 95% was interstate grain, flax and mustard seed, 1.6% was other freight.

Mr. Hagman: Off the record.

(Discussion off the record.)

Q. All right. Proceed. A. For the three-year and nine-  
1218 month period of the aggregate revenue freight interchanged by the Montana Western Railway 95.8% was interstate, and of the total revenue freight interchanged 93.4% was interstate grain, flax and mustard seed, 2.4% being other freight. This page of the exhibit shows that interstate grain, flax and mustard seed is the commodity on the Montana Western Railway.

Q. Does flax seed take the grain rate? A. No sir. On the Montana Western as well as the Great Northern Railway flax seed takes higher rates than grains. Great Northern flax seed rates are 112% of the grain rate.

Q. But they are related to the grain rate? A. Yes sir, that is as prescribed by the Commission in Docket 17000, Part VII.

Q. Now your page 3? A. Page 3 is a further refinement of the commodities handled by the Montana Western Railway for the three-year and nine-month period, and there is an initial breakdown to show the commodities and the weights which were subject to joint rates and a separate showing as to those subject to combination rates, with the percentage for each commodity to the total as subject to joint or combination rates. Each of those breakdowns has been further broken down to show that traffic subject to joint rates which moved intrastate and that which moved interstate. The same showing is made with respect to the combination rate traffic.

1219 The significant totals on Line 29 show that for the entire three-year and nine-month period 3.1% of the total revenue freight was intrastate subject to joint rates, 2.1% was interstate subject to joint rates, or 5.2% of the total moving on joint rates. Combination rate traffic for the same period, 1.1% intrastate, 93.7% interstate, or a total subject to combination rates of 94.8%. Of that 93.7%, 93.4% was interstate grain, flax and mustard seed, being combination-rated interstate traffic, 3% was other than grain interstate on combination rates. Of the total 94.8% as shown being subject to combination rates of the total revenue freight, 93.7% was grain, flax and mustard seed, 1.1% was other freight.

Q. Well, this shows generally then that in considering the combinations the important thing is to consider the outbound grain, flax seed and mustard seed, which constitutes in the neighborhood.

of 93 or 94% of all the tonnages interchanged with that railroad, is that right? A. Well, that is right, in giving consideration to a reasonable division if the present combination or proportionals were made the joint rate.

Q. Well, what I mean is that if you are considering the effect of division not only on joint rates but the combination of the through revenue, the outbound grain is the great bulk of it? A. 1220 That is right.

Q. Now, your Exhibit 44. A. Exhibit No. 44 shows destinations to which carloads of grain from Valier and originally billed to Shelby were reconsigned during test months in the years 1946, '47, '48, and the first nine months of 1949. The purpose of the exhibit is to indicate the destinations of these grain cars, because in making up the traffic movement of originating commodities from the Montana Western we found that from Valier there were large numbers of carloads of grain billed initially to Shelby, and of course Shelby is not a destination for grain as a final destination.

Q. What is done at Shelby? A. At Shelby the Farmers Union have storage facilities on which a transit arrangement is in effect, but principally Shelby is designated by the State of Montana as an inspection point for grain, and this grain primarily is billed to Shelby for inspection and subsequent disposition after the inspection is made known. The grain is then disposed of either to the east or the west.

(Respondent's Exhibit No. 44, witness McGuire, marked for identification.)

Q. Now, the purpose of this exhibit was to determine what proportions of the grain billed from the Montana Western to Shelby ultimately goes to the eastern or western terminals or else- 1221 where, is that right? A. That is right, but to have inspected the billing on each car billed to Shelby in each of the periods would have been a tremendous undertaking in the short time available, so, as representative, we took the peak month, or that month in each of the periods which had the largest number of cars billed to Shelby of any of the months in those periods. The billing for each of those months was checked, and the reconsigned destinations were determined and as shown on this exhibit.

Mr. Loble: Is that direct billing from Valier or Conrad or where?

The Witness: There is no through billing arrangement with the Montana Western. All shipments to or from the Montana Western are rebilled at Conrad on new way bills, with the charges under Conrad shown as advances on the billing.

Exam. Witters: And new bills of lading?

The Witness: No, there is only one bill of lading issued.



Exam. Witters: And that is issued where?

The Witness: At point of origin.

Q. (By Mr. Hagman:) But the bill-of-lading issued by the Montana Western at Valier, that is the only bill-of-lading issued, saying it is going to Minneapolis, for instance? A. That is right, unless the shipment is reconsigned or diverted, then a new exchange bill-of-lading is issued at whatever point the diversion or reconsignment is made.

1222 Q. But when the shipment reaches Conrad the Great Northern makes a new way bill? A. That is right.

Q. And the way bill of course is solely for the guidance of the different participating carriers? A. That is right.

Exam. Witters: Why do you show Spokane separately as a destination?

The Witness: Spokane, Washington, takes a lower rate than the north coast terminals. For the purpose of a subsequent calculation the cars to Spokane had to be figured separately because of a lesser rate.

Q. (By Mr. Hagman:) Now, your Exhibit 45. A. Exhibit No. 45 is composed of two pages, and is a statement of the present rates and charges, based on average earloading, for grain and mustard seed from the Montana Western to principal destination points, with a comparison of the present rates with combination of local rates to and from Conrad, along with mileages for each line and percentage such mileages are of the total distance, and the ton-mile and ear-mile earnings for the total distance and separately for each of the lines.

Q. Now, suppose that, just to illustrate this, you go through that item of grain from Valier to Minneapolis, and explain that as illustrative of the others. A. Yes. Valier to Minneapolis, the present rates are combinations of proportionals, the Montana  
1223 Western factor being 9c, that of the Great Northern 62½c.

(Respondent's Exhibit No. 45, witness McGuire, marked for identification.)

Q. Now, what you are speaking of is grain entirely on this page?

A. Grain on this example is all I am talking about.

Q. Grain and mustard seed? A. Well, the specific example from Valier to Minneapolis deals only with grain.

Q. All right. Then you have a combination in effect at the present time which is a combination of proportional rates to Conrad? A. That is right.

Q. 71½c to Minneapolis? A. From Valier to Minneapolis.

Q. All right. Now that is the present rate. Now what is that next calculation? A. The next column shows the present combination of

local rates over Conrad, Montana, or 14c from Valier to Conrad, 65½c Conrad to Minneapolis, a total of 79½c from Valier to Minneapolis.

Q. Now that rate is just shown for information, it doesn't actually apply, isn't that so? A. That is right.

Q. All right. Proceed. A. The combination of proportional rates that will be observed is 8c less than the combination of locals. The total mileage from Valier to Minneapolis is 1050 miles. The Montana Western from Valier to Conrad has a distance of 20 miles, and the Great Northern from Valier to Minneapolis 1030 miles. The Montana Western perform 1.9% of the total haul. The Great Northern perform 98.1% of the total haul.

Q. Now, just comment on those weighted average figures at the bottom. A. On the last line of page 1 the weighted average for grain and mustard seed shows that the Montana Western weighted average proportional rate to Conrad on grain and mustard seed would be 9c, the Great Northern weighted average proportional rate on grain and mustard seed to the principal destinations would be 61½c, a total of 70½c, the weighted average distance of the Montana Western 18 miles, that of the Great Northern is 915 miles. The total distance on grain and mustard seed from the Montana Western to the principal destinations would be 933 miles. The weighted average haul of the Montana Western is 1.9% of the total, and the Great Northern weighted average proportion of the haul is 98.1%.

Q. Now, referring back for a moment to that figure of 9c, as shown in this line, weighted average for grain and mustard seed, do you get that 9c as a weighted average because of applying the rule for disposition of fractions? A. Yes.

1225 Q. In other words, this weighted average here is 9c, and when you look above you find some items that are less than 9c, but that is explained by applying this rule for fractions, is it? A. Well, that is part of the explanation.

Exam. Witters: Well, the weighting accounts for part of it?

The Witness: That is right. The Examiner has the point. The greater part of the grain originating at Valier is subject to the higher rate of 9c, and in weighting that average it actually came out 8.8, and observing the rule for disposition of fractions in grain rate tables the 8.8 would come to 9. The Great Northern weighted average proportional rate is actually 61.4

Q. (By Mr. Hagman) Now this shows that the Great Northern grain rate from Conrad to Minneapolis is 65½c. A. That is the local rate from Conrad.

Q. That's right, but the proportional rate that applies on grain from the Montana Western is 3c lower than the local rate? A. That is right.

Q. Or 62.5c? A. Yes.

Q. And westbound, the Great Northern's proportional rate from Conrad is also lower than its local rate from Conrad? A. That is right.

1226 Q. By how many cents? A. To Seattle,  $21\frac{1}{2}$ c lower than the local. To Spokane it is 3c lower than the local. On mustard seed to Minneapolis the proportional rate is 2c less than the local.

Q. Well then, the Montana Western having a proportional rate of 9c on grain to Conrad and the Great Northern's proportional rate from Conrad being 3c less than the local, that results in Valier being 6c over Conrad on grain to Minneapolis, is that right? A. That is right.

Q. And with respect to the figures in the last column of Exhibit 45, that would indicate then that the Montana Western's percentages of total hauls range from 0.7% to 4.2%? A. That is as shown on the exhibit.

Q. And the Great Northern's percentages of the total hauls range from 95.8% to 99.3% of the distance? A. That's right.

Q. And that means then, does it, that on 93.3% of the total tonnage interchanged the Great Northern performs 98.1% of the total haul, and the Montana Western performs 1.9% of the total haul? A. That is absolutely correct.

Q. Now, page 2 of that Exhibit 45? A. Page 2 shows the same commodities as on page 1, the same origins and destinations, and it shows the average weight per car in pounds.

1227 Q. Now is that the column numbered (1)? A. The column marked (1) is the average weight in pounds per car.

Q. Well, do you want that heading corrected then, instead of reading "Weight in lbs." to read "Average weight per car in lbs."? A. Well, it can be so corrected, although the (1) reference mark will explain that also. That blank in the explanation of the (1) reference should be Exhibit 43.

Now, taking page 2, the same example that I discussed in detail on page 1, or grain from Valier to Minneapolis on an average weight per car of 102,149 pounds, with the present rate of  $71\frac{1}{2}$ c a cwt., the total freight revenue per car from Valier to Minneapolis is \$730.37. That revenue is on the present rate, which is a combination of proportionals produced from Valier to destination, 13.62 mills per ton-mile, 69.6c per car-mile, that is for the total distance of 1050 miles. The Montana Western for 20 miles receives on the average car shown on this exhibit \$91.94, or 12.6% of the total.

freight revenue, or 90.00 mills per ton-mile or 459.7c per car-mile. The Great Northern Railway for 1030 miles would receive \$638.43, or 87.4% of the total revenue, producing 12.14 mills per ton-mile, 62c per car-mile. I particularly call attention to the percentage of revenue received by the Montana Western under the present 1228 basis of combination of proportional rates, or 12.6% for 1.9% of the service.

Q. You mean of the distance? A. Of the distance of the haul. The Montana Western on the commodities shown on the last line, with a weighted average for grain and mustard seed average weight per car in pounds of 99,903 pounds. The weighted average combination of proportional rates 70½c, total freight revenue per car of \$704.32 for a weighted average haul origins to destinations of 933 miles produces 15.11 mills per ton-mile, 75.5c per car-mile. The Montana Western for a weighted average haul of 18 miles earns on a weighted average \$89.91 per car, or 12.8% of the revenue, producing for the 18-mile weighted average haul 100 mills per ton-mile, 499.5c per car-mile. The Great Northern for a weighted average haul of 915 miles receives \$614.41, or 87.2% of the weighted average revenue, producing for that haul of the Great Northern 13.44 mills per ton-mile, 67.1c per car-mile. Now on a weighted average which would embrace the three-year and nine-month period, the Montana Western on all grain and mustard seed earned 12.8% of the revenue for a weighted average haul comprising 1.9% of the total haul, and the Great Northern earned 87.2% of the total revenue for 98.1% of the haul.

Q. All right. Your Exhibit No. 46 now. A. Exhibit No. 46 is a statement of the Montana Western revenues calculated on 1229 present rates and charges applied to the movement of grain, flax seed and mustard seed for the year 1948, as compared with a combination which is shown below on the exhibit to the Montana Western Railway were the present combination of proportional rates published as joint rates.

(Exhibit No. 46, witness McGuire, marked for identification.)

Q. Well then, this whole page now is on the assumption that these grain rates were joint rates today, which they are not? A. That's right. It is based on an assumption.

Q. And further assuming that the supposed joint rate is the same as the present combination of proportionals? A. Yes.

Q. And you are assuming that so that you can indicate what the percentage divisions would be if the present combination rates on proportionals were changed into joint rates? A. That is right. Now I have taken the movement of grain, flax seed and mustard seed in interstate commerce for the year 1948, which can be determined from the Exhibit No. 40, and I have shown all of the grain



from Valier that went to eastern terminals or stations taking the same rates, that to the north coast as well as that to Spokane. Now I have shown some grain to California. That grain to California is that which is shown on Exhibit 40 for the year of 1948 as billed destination of Great Falls. I assume that after transit at Great Falls it was rebilled to California via Butte, Montana. And 1230 the flax seed from Valier is shown to eastern terminals, and there I have taken 50% of that which was billed to Great Falls as outbound transit, Mustard seed from Manson I have credited all to eastern terminals or beyond, and movement beyond would be on a combination over our eastern terminals. I have then shown the rate to the Montana Western, which is their present proportional rate from the origins shown for the commodities shown from each of the origins, and the proportional rates beyond to the destinations indicated on the exhibit, and the total of the combination of proportionals. The Montana Western revenue is that which they would have earned on the present rates inclusive of all authorized interstate increases. It will be noted that on 435 cars with an aggregate weight of 43,897,045 pounds, the Montana Western would receive today \$38,705.49.

Q. You mean on the combination? A. On the combination of proportionals, with the Montana Western today as in the past receiving as their proportion their proportional rate.

Q. Yes. A. In the last three columns I have taken the total of the proportional rates and applied the divisions which are shown, that is 12½% to the Montana Western of the total of the combination of proportional rates to our eastern or north coast 1231 terminals or to Spokane. On the traffic to California via Butte I have taken the aggregate of the revenue north of Butte, on the assumption that the lines south of Butte, Montana, would not improve their divisions because of the combination of proportionals being made into a joint rate. In other words, lines south of Butte would earn no more than they do at the present proportional rate from Conrad, and then out of that total north of Butte I have divided that by allowing the Montana Western 25%. That was an arbitrary figure, and is very generous, considering their haul is substantially less than 25% of the total distance. The result in cents per 100 pounds is shown in the next to the last column, and the revenue which would be derived from such divisions applied to a joint rate reflecting a combination of proportionals would be \$38,195.81, or, roughly, \$500 less revenue than they would earn today.

Q. Well, this in short means that if the present combination of locals were turned into a joint rate with the Montana Commission on a 12½% — A. You mean the Montana Western?

Q. The Montana Western on the basis of getting 12½% would receive less revenue than they are actually receiving? A. On the basis of an equitable and reasonable division could not improve their present proportion. Now the distance of the Montana Western

Railway compared to the total for the movement origin to 1232 destination is a primary consideration. Additionally there are services which normally a connecting railroad perform themselves which the Montana Western doesn't, and one of these is car supply. That railroad does not own any revenue freight equipment, and the car supply of that line is undertaken by the Great Northern Railway. With that car supply the Great Northern operates with the Montana Western the most favorable per diem arrangement that can be worked out. Under the Car Service Rules of the Association of American Railroads the customary arrangement between trunk lines is to pay the owning line per diem for each day from the time the car is interchanged until it is returned. On November 1, 1949, this per diem charge for freight cars became \$1.75 per day.

The arrangement referred to above does not apply as between the Great Northern and the Montana Western. As a result of an exception to the general per diem rules a per diem arrangement between the Great Northern and the Montana Western was authorized which provides generally: (1) With respect to an empty car delivered by the Great Northern to the Montana Western, the per diem charge commences only from the time the Montana Western spots the car for loading and terminates with delivery of the car to the Great Northern, which period is adjusted to allow the Montana Western two days free time as a maximum; (2) With respect to a car delivered by the Great Northern to Montana Western under

load, the per diem commences from the time of delivery of the 1233 car to the Montana Western until it is returned to the Great

Northern under load, the per diem is charged as follows: Per diem begins from the time the loaded car is delivered to the Montana Western until it is unloaded. There is no charge of per diem during the period the Montana Western holds the car for prospective loading. Per diem commences again when the Montana Western places the car for loading and per diem continues until the loaded car is delivered to the Great Northern, subject to a maximum of two days free time on each of the loaded movements.

When the Great Northern delivers a foreign car to the Montana Western, the Great Northern pays the owner under the regular per diem arrangement and the concession made to the Montana Western as above set forth is stood by the Great Northern.

This method of charging per diem against the Montana Western resulted in the following during the 31 months preceding Sep-

tember 1, 1947: Number days per diem accrued while cars were on Montana Western, 4,746. Car days charged against Montana Western, 555 car days.

Q. Back there a little way you said the most favorable division: I think you should make that clear. Favorable to whom? A. To the Montana Western. There is the division shown on the exhibit.

Q. All right. Proceed. A. Another factor in the consideration of division of revenue and the service performed by these lines is one which does not exist on the Montana Western, and that is transit. The proportional rates of the Great Northern are subject to free transit privileges, and grain generally is given transit somewhere en route. The transit privilege calls for two additional terminal expenses, placing of the car at the mill or elevator at the transit station, 48 hours' free time to unload; putting in an empty car for loading outbound grain, with another 48 hours' free time to load. In the case of products shipped from transit point, on the basis of a study which the Great Northern Railway made in connection with the Great Falls transit case, Docket 29515, it was developed that on the outbound products the equivalent of 1.52 cars would be required to move out the same amount of weight in inbound grain. The Great Northern at the eastern terminals of Minneapolis, St. Paul, Duluth, Superior, are required to absorb switching charges at those points on all grain received and consigned to mills and elevators on lines other than the Great Northern Railway.

Q. Now you have been enumerating a number of services which the Great Northern is required to give to earn its part of the revenue; all services which are not given while it is on the Montana Western?

A. Yes.

1235 Q. In addition to these various services which the Great Northern gives, are there also some instances of switching and other expense in connection with the inspection of cars of grain? A. Oh, yes, definitely. Cars of grain which are billed for inspection at Shelby, Grand Forks, eastern or western terminals, are necessarily switched from the break-up yards to hold tracks, at which points samples of the grain are withdrawn for inspection, and after disposition as a result of the grain inspection cars are required to be switched from the hold tracks to tracks in the yards for movement out by line-haul freight, or otherwise to be switched to mills and elevators in the terminal district.

Q. Does that complete your explanation of Exhibit 46? A. It does.

Mr. Hagman: Now, just a moment, before we take up Exhibit 47. Off the record.

.(Discussion off the record.)

Q. (By Mr. Hagman:) Explain Exhibit 47, if you will, please.

A. Exhibit No. 46 is a copy of the division sheet which applies in connection with the Montana Western Railway Company and provides the basis of division, with joint rates applying with that company to the extent that there are joint rates. On page 2 of the division sheet is the general basis which would be observed on joint rates, except as otherwise provided elsewhere in the 1236 division sheet. Page 2 shows the basis of division which would apply with the Montana Western, or  $12\frac{1}{2}\%$  of the rate or proportion of the rate west of the Great Northern eastern terminal. That would also apply to or from Great Northern Railway stations in Minnesota, Wisconsin, North and South Dakota, also Iowa. The same thing would be true as to the Missouri River and points west thereof, and Colorado common points such as Denver, Colorado. There are some specific divisions shown in this division sheet on commodities such as coal and cement and plaster which are intrastate in character. Page 4, on livestock, interstate the same basis applies as shown on page 2, except the Montana Western is subject to the maximum division. I might explain further that the specific proportions shown in this division sheet are as of April 19, 1939, and would be subject to further increases to reflect rate increases in Ex Parte 162, 166 and 168.

(Respondent's Exhibit No. 47, witness McGuire, marked for identification.)

Exam. Witters: That applies to the \$15.75 per car? A. Yes sir, as well as any other specific proportion shown in that division sheet. Now, the  $12\frac{1}{2}\%$  division which I applied to the Montana Western is shown in Exhibit 46 on the revenue to the eastern and north coast terminals, as well as Spokane. That  $12\frac{1}{2}\%$  should be a reasonable and equitable division for this short line, when on a 1237 weighted average they perform less than 2% of the haul, and additionally are not required to furnish services to the extent that I have explained.

Now, additionally, for simplification, and as a matter of common practice with other short lines on a heavy moving commodity which is the predominant part of the tonnage, it would be desirable that a specific division on grain be established rather than a percentage.

Q. If there were joint rates? A. If there were a joint rate, and that specific proportion would be reasonably less than  $12\frac{1}{2}\%$  and no more than the present proportional rates which that company contribute in making the aggregate total rate.

It is not uncommon—I have taken some random examples with other short lines with which the Great Northern Railway connects. The Cowlitz, Chehalis & Cascade Railway, with whom the Great



Northern has a connection at Chehalis, Washington, on grain to eastern transcontinental destinations on which the Great Northern Railway would perform the long-haul service, that company for a 15-mile haul, out of rates in effect today inclusive of all increases, would earn today 7.8c per 100 pounds. On grain to north Pacific Coast destinations, where the measure of the rate is less and the Great Northern's haul is not so great, for the same 15-mile haul that company, the Cowlitz, Chehalis & Cascade Railway Company, would earn 5.6c on grain.

1238 Exam. Witters: You say "would earn"?

Q. (By Mr. Hagman:) You mean would receive under present divisions? A. Would receive under present divisions. That railroad originates a substantial amount of lumber, and lumber to eastern transcontinental destinations at the present rates would receive for a 15-mile haul 5.1c; for a 20-mile haul 6.5c. These lumber divisions are in conformity with the Tap Line case, I. & S. Docket No. 11.

And another example would be the Pacific Coast Railroad, the Great Northern Railway connecting with that company at Seattle and Black River, Washington. For hauls ranging from 2 to 18 miles on grain between north Pacific Coast points or Montana the Pacific Coast Railway earned—

Q. Would receive? A. Would receive 5.9c—

Q. Would receive or does deceive? A. Would receive on any grain that they handle, and do on any grain that they handle receive 5.9c per 100 pounds. On lumber which would be originated by that company today for hauls ranging from 2 to 18 miles, it would receive 8.3c per 100 pounds.

Exam. Witters: Out of what rate?

The Witness: The rate to Minneapolis or St. Paul, for example, would be 65½c, subject to Ex Parte increases; that rate to—  
1239 day would be in excess of \$0.9c.

Q. (By Mr. Hagman:) 8.3c is the present division? A. Inclusive of all increases. The Portland Traction Company, with which the Great Northern Railway connects at Portland, Oregon, on grain, for hauls of 6 to 23 miles between points on their line and north Pacific Coast and Montana points, earns 7.6c per 100 pounds. The Waterville Railway, which the Great Northern Railway has a connection with at Douglas, Washington, for 5 miles on grain to north Pacific Coast, Montana, or transcontinental destinations, receives 3.9c per 100 pounds.

Now, as a comparison, on lumber, for hauls comparable to those of the Montana Western, the Tap Line case, I. & S. Docket 11, with the authorized freight rate increases figured into it, would produce

divisions of 3.9c per 100 pounds for 7 miles, 5.1c per 100 pounds for 14 miles, 6 $\frac{1}{2}$ c per 100 pounds for 20 miles.

From the comparisons which I have made, and considering the amount of the haul of the Montana Western Railway, 12 $\frac{1}{2}$ % on interstate grain, flax seed and mustard seed to the east or west is the most that reasonably could be allowed.

Q. Do you also have a comparison with the Washington, Idaho & Montana Railway? A. Oh, yes. The Washington, Idaho & Montana Railway, connecting with the Great Northern Railway at Polouse, Washington, on grain to the north Pacific Coast for the hauls of the W. I. & M. Railroad ranging from 4 to 47 miles 1240 would receive today 7.6c per 100 pounds.

Q. Some time ago you referred to the Great Northern's local rates, freight rates on grain to the eastern and western terminals? A. Yes.

Q. Are those local rates the rates prescribed by the Interstate Commerce Commission in Docket 17000, Part VII, Western Grain Rates, 205 I.C.C. 301, plus the general advances that have been authorized by the Commission subsequent to that date? A. Yes, the local rates of the Great Northern Railway are Commission-prescribed maximum reasonable rates.

Q. And these proportional rates the Great Northern has applying from Conrad are conditioned solely upon prior movement over the Montana Western, are they not? A. Yes.

Q. Does anything further occur to you, Mr. McGuire? A. Well, I observe from Mr. Atwood's Exhibit 37 that the Montana Western for 1950, to just meet their deficit, conditioned on meeting all of their current obligations, would necessitate 11 $\frac{1}{2}$ c per 100 pounds additionally to the Montana Western on wheat, flax seed, mustard seed and barley, that is over and above their present proportional rates; and as an example, from Valier, Montana, the Montana

Western would have to receive 20 $\frac{1}{2}$ c per 100 pounds for a 124 $\frac{1}{2}$  20-mile haul. That would require a division to the Montana

Western based on the weighted average hauls, with a weighted average combination of proportional rates of 70 $\frac{1}{2}$ c, of, roughly 29% for 1.9% of the haul. That 20 $\frac{1}{2}$ c would represent the prescribed terminal rate on wheat in Docket 17000, Part VII, plus authorized increases for 135 miles, from Hanley Falls, Minnesota, to Minneapolis. That same 20 $\frac{1}{2}$ c would move wheat 280 miles on the distance scales in the Great Northern Railway Montana-Eastern Terminal Grain Tariff I.C.C. A-8352, and, taking the rate as made up of proportionals from Valier to Minneapolis, the Great Northern Railway Company, if we were to allow that 11 $\frac{1}{2}$ c additional, would receive 51c from Conrad to Minneapolis for 1030 miles of service or haul. And to put it another way, that 51c today would move a car-

load of wheat from Oswego, Montana, to Minneapolis, 703 miles. Or to put it another way, the Great Northern would be expected to haul wheat or barley from Conrad approximately 300 miles without receiving any compensation whatsoever, and taking the statement that the Montana Western would need on an average  $20\frac{1}{2}c$  per 100 pounds on wheat or barley, from Valier to Great Falls on the interstate rates with milling in transit at Great Falls, the Great Northern from Conrad to Great Falls would perform the haul at a loss, we would go in the red. On the movement to Butte the Montana Western would perform 7.7% of the total haul, which would be 20 miles, Valier to Conrad, 239 miles Conrad to Butte, and  $29\frac{1}{2}c$  1242 would give that railroad at least 75% of the freight rate or revenue.

There is another example. From Valier, taking the weighted average haul of the Montana Western on grain, and a movement to Portland, Oregon, via Montana Western to Conrad, Great Northern, Spokane, Portland & Seattle Railroad, Montana Western getting  $20\frac{1}{2}c$  for 18 miles, Great Northern 21.6c for 457 miles, the Spokane, Portland & Seattle Railway 25.4c for 378 miles.

I think that would illustrate that to produce a division in the amount the Montana Western would require just to break even is absolutely out of proportion to the haul and the services which they perform. It can't be done.

Q. I take it from the statement that you have made that in your opinion the division of the through revenue now received on grain by the Montana Western amounts to around  $12\frac{1}{2}\%$ ? A. Their present division—oh, you mean their present proportion of the revenue?

Q. Their revenue amounts to around  $12\frac{1}{2}\%$  of the total through revenue, doesn't it? A. The present amounts on the average are better than  $12\frac{1}{2}\%$ , about 12.8%.

Q. And is it your opinion from your experience in working with divisions that that is a liberal division to the Montana 1243 Western? A. Very liberal, and it is as liberal as any division which we accord any short line with which we operate joint rates performing similar hauls, and the Great Northern Railway's hauls being similar.

Q. Does a large railway system like the Great Northern have to take into consideration in determining upon divisions the effect that any one division arrangement with a short line may have upon its combination arrangements with other short lines generally connecting with the system? A. Oh, yes, indeed. If we are to allow one short line a basis of divisions which is more liberal the other lines expect to be similarly treated. In other words, they don't want to be discriminated against.



Q. In that connection do you have in mind the provision in paragraph 4 of Section 1 of the Interstate Commerce Act?

Mr. Loble: Paragraph what?

Mr. Hagman: Paragraph 4 of Section 1 of the Interstate Commerce Act: "That it shall be the duty of every common carrier in the case of joint rates, fares or charges, to establish just, reasonable and equitable divisions thereof which shall not unduly prefer or prejudice any of such participating carriers." A. I have that section of the Act in mind, yes.

Q. (By Mr. Hagman:) Well now, if there is nothing further you think of, Mr. McGuire, that will complete the direct examination. A. That's all I think of.

Exam. Witters: Do you wish to offer these exhibits?

Mr. Hagman: Yes, I offer in evidence these exhibits which have been marked for identification 38 to 47 inclusive.

Exam. Witters: They are received.

(Respondent's Exhibits Numbered 38 to 47 inclusive, witness McGuire, received in evidence.)

Mr. Hagman: I'd like to make a statement, Mr. Examiner, in connection with the presentation that we have made through witness McGuire.

Because the complaint in this Docket 30325 did not enable us to determine what the issues were, and because our motion to make it more definite and certain was denied, we didn't know exactly what to prepare for, and so we prepared about everything that we could think of, and that explains why our showing and our presentation goes far beyond the issues as they developed and as we learned them yesterday. And of course in making the presentation as we have we do not waive the issues as they have finally been developed. In other words, we are not consenting to the issues being anything that the broad evidence might support.

Exam. Witters: Yes.

We will take a short recess at this time.

(Whereupon, at 3:45 p.m. the hearing recessed briefly.)

1245 Exam. Witters: The hearing will come to order.

Mr. Loble: Do you wish to proceed, Mr. Jardine?

Mr. Jardine: No, you go ahead.

#### Cross Examination

Q. (By Mr. Loble:) Mr. McGuire, you have long been identified with the Great Northern, have you not? A. For approximately 12 years.



Q. And you are familiar with the fact that it is engaged in the transportation business by rail, are you not? A. Very much so.

Q. You never heard of its being engaged in the banking business, did you? A. No, I would have no knowledge of that.

Q. Will you refer then to that Paragraph 4 of Section 1 of the Interstate Commerce Act that you read? A. I didn't read it.

Q. Well, you said you had it there. A. I didn't have it. I said I was aware of the provisions of that section of the Act.

Q. Have you it now? A. I don't have it before me, no.

Q. Are you acquainted with the provisions of that section? A. I don't have it right handy.

Exam. Witters: I have it here.

Q. (By Mr. Loble:) I think it was read to you by Mr. 1246 Hagman, and the latter part of it is to the effect that in case of joint rates, fares or charges every common carrier must establish just, reasonable and equitable divisions thereof which shall not unduly prefer or prejudice any of such participating carriers. You are familiar with that? A. Yes.

Q. There are exceptions where higher rates, higher divisions are permitted due to economic necessity of a connecting carrier, are there not? A. I know of no extreme exceptions.

Mr. Hagman: Well, Mr. Loble, you have in mind Paragraph 6 of Section 15 of the Act, which lays down for the Commission some of the rules to guide them in fixing divisions, have you not?

Mr. Loble: I am asking if he knows of instances under the rules of the Interstate Commerce Commission where exceptions are made to that statement that I just read.

The Witness: Well, let me get your question so that I understand it. Do I understand your question to be do I know of any exceptions to the rule where they receive a greater division due to economic conditions?

Q. (By Mr. Loble:) Yes. A. No.

Q. Now the condition that you have described here in your various exhibits is not new as to the Montana Western? A. 1247 No.

Q. And you heard it testified here that for a period of 25 years approximately, or longer, the Great Northern Railway has through various ways and devices provided material and funds to the Montana Western Railroad to permit this railroad to operate. You have heard that testified to, have you not? A. I heard people talk about it during the course of this hearing.

Q. Yes. You have no personal knowledge of it? A. None whatsoever.

Q. If such has occurred over the past 25 years do you have any knowledge of that information being transmitted to other carriers,

connecting carriers, so that they might know that the Great Northern was following a course of conduct with the Montana Western different than they might with some of these connecting carriers? You don't know anything about that, do you? A. I don't know a thing about that.

Q: And while the Act provides as you specified in Paragraph 4, of Section, 1, if in truth and in fact through an arrangement over a long period of time the Great Northern has been, let us say, subsidizing the Montana Western, in so doing it would be transgressing the provision of the Act that was read, would it not?

Mr. Hagman: I object to calling for the witness's conclusion as to a matter of law.

Exam. Witters: You may answer the question if you know.

Q. (By Mr. Loble:) If you know. A. In the first place, I don't understand the question. I couldn't answer it.

Q. You don't understand it? A. I don't understand your question at all.

Q. You understand what subsidy means, I'm sure? A. I understand the meaning of the word subsidy, but I do not understand the question.

Q. Mr. McGuire, if for 25 years or more a practice has been engaged in by the Great Northern in conjunction with the Montana Western Railroad whereby through finances and supplies and in other ways the Great Northern has been advancing what was necessary for the operating deficit of the Montana Western, would that, if you know, be a violation of the provisions of the Interstate Commerce Act? A. Your question is a supposition. I do not know of any subsidizing by the Great Northern of the Montana Western. I have no knowledge of that. As to any violation of the Act by the Great Northern, I know of no section of the Act which we are or have been violating. To the extent that we have joint rates with the Montana Western we have arranged reasonable divisions to that company. Aside from that I don't know how I could answer your question.

1249 Q. I am asking you to assume. A. I don't care to assume.

Exam. Witters: Well, that is a question of law, Mr. Loble; as to whether it is a violation.

Mr. Loble: I am asking him if he knows.

The Witness: I answered you I don't know of any violation of the Act in the past or in the present by the Great Northern Railway.

Q. (By Mr. Loble:) Because you don't know of any of these arrangements that were made that have been testified to whereby the Great Northern, let us say subsidized the Montana Western, you don't know anything about that? A. I answered your question.

Q. Well, will you answer it again. You don't know, do you? A. That was my answer.

Q. Then is that your answer now? A. Yes, it is my answer.

Q. Now you referred to Mr. Atwood's figures here a while ago when you referred to his Exhibit 37. Do you recall that? A. Yes sir.

Q. And you predicated much of the testimony that followed whereby you said that the Montana Western would receive approximately 20c, didn't you say, of the rate for 20 miles, you predicated it on this Exhibit 37? A. I said on the basis of Exhibit 37, where the Montana Western would require 11½c a cwt. additional 1250 on grain, flax and mustard seed over and above what they earn or receive today to make them break even would on grain from Valier, Montana, require them to receive a rate or proportion of 20½c per hundred pounds.

Q. Yes, and that was based on Exhibit 37 of Mr. Atwood, which called for an expenditure for the year 1950 of \$131,000, something like that?

Mr. Hagman: \$113,00.

Q. (By Mr. Loble:) \$113,000? A. That's right.

Q. And of course your answer necessarily is predicated upon the correctness of that exhibit, is it not? A. I am not an operating man, Mr. Loble. All I can do is assume that the people who operate the Montana Western Railway know what they will have to do.

Q. So it is predicated upon that exhibit being correct? A. That is all I can do is to make it upon that predication.

Q. Now, can you tell us if, instead of the Montana Western having to proceed under Exhibit 37, if that is to be out of the way for the moment, and instead of that a program had been made whereby the Great Northern Railroad on a rehabilitation program was to advance \$171,000 in money or material over a period of 8 years, what the result would have been in that instance as compared to your answer in reference to Exhibit 37?

1251 Mr. Hagman: I will object to the question on the ground that it is predicated on an assumption not supported by the record.

Mr. Loble: Well, it is in the record so far, testified to by Mr. Young.

Mr. Hagman: It is highly speculative, and I don't see what it would add to the facts in the case.

Mr. Loble: It is not speculative at all. \$17,000 of it was used.

Exam. Witters: He may answer if he knows.

The Witness: I know nothing of any rehabilitation program on the part of the Great Northern Railway. I am in this proceeding testifying as to a reasonable division to the Montana Western on the complaint case, and that which you have posed to me as a ques-

tion still is something that would not be considered by me at all as to making a division for the Montana Western Railway.

20½% on the basis of Exhibit 37 is absolutely out of reason. It is just out, and I have already stated that 12½% is the most reasonable division that could be allowed that company. That would not even produce the revenue they would receive today on the division of proportional rates. The result from there on in is with the Montana Western.

Q. (By Mr. Loble:) Then if that is unreasonable state upon what possible theory \$171,000 could be advanced by the Great  
1252 Northern to the Montana Western in any way for a rehabilitation program?

Mr. Hagman: I object to that for the same reason again.

Mr. Loble: Well, he is an expert. He takes fictitious figures. He's got some here in one exhibit, Exhibit 46.

Mr. Hagman: Well, I ask that the word "fictitious" be stricken. This isn't fictitious, Exhibit 46.

Mr. Loble: Well, what is it, an assumption of combination rates, is that right?

Mr. Hagman: Well, it's just assuming that the present level of through rates were in the form of a joint rate. He's assumed that so he could talk about divisions.

Q. (By Mr. Loble:) Well, assuming that the Great Northern was to advance to the Montana Western in any way \$171,000 either in money or material for an 8-year rehabilitation program, can you tell us what would be the result of any such arrangement so far as revenue derived to the Montana Western was concerned?

Mr. Hagman: I object to that question on the ground that there is no evidence in the record that the Great Northern Railway is going to advance the Montana Western Railway Company \$171,000 or any other sum.

Exam. Witters: Well, he may answer the question.

The Witness: Read the question, will you, please.

(The Reporter read the pending question.)

The Witness: I think you should have asked Mr. Atwood  
1253 that question.

Mr. Hagman: Well, answer it if you can.

The Witness: I can't answer it. I don't know what the result on the Montana Western would be.

Q. (By Mr. Loble:) This much you will grant, will you not, Mr. McGuire, that there is a large indebtedness owed by the Montana Western to the Great Northern? A. I understand from the testimony I have heard that the Great Northern Railway holds the bonds of the Montana Western, that the Montana Western owes



interest on those bonds, and aside from that I have no knowledge of the Montana Western except from the financial statements that have appeared as a matter of record in these hearings today and yesterday.

Q. Well, assuming, as you have done here, that the Montana Western owes large sums of money to the Great Northern, both on its bonds, interest, and advances made over the years, that it has not been able to pay, and that the Great Northern was to advance \$171,000 in addition for a rehabilitation program that could not be repaid, the result would be, Mr. McGuire, that the amount of money that the Great Northern received in revenue in connecting with the Montana Western would not be as reflected in your figures, but would be substantially less, would it not?

Mr. Hagman: Oh, I object to that. It is so obviously a mathematical computation, it seems to me.

Exam. Witters: Well, he hasn't submitted any figures 1254 showing operating results of the Montana Western.

Mr. Loble: I am not talking about the Montana Western, I am talking about the Great Northern now. I am saying that if the Montana Western owes what the record shows it owes, and they advance \$171,000 more that isn't repaid, in truth and in fact the amount of revenue that the Great Northern receives under this rate isn't the amount of revenue at all; that they themselves are contributing to the Montana Western by this circuitous method of book-keeping, and it isn't really a division of rates that should be shocking to anyone, the Interstate Commerce Commission or the Great Northern or anyone. It's done now. That is what I am asking if he knows.

The Witness: I don't know a thing about the money that may or may not have been advanced in the way of material or otherwise. To my knowledge the Great Northern has not done any of these things.

Mr. Hagman: Mr. McGuire, you are in the traffic department, are you not?

The Witness: That is right.

Mr. Hagman: And the Great Northern is departmentalized is it not?

The Witness: Yes sir.

Mr. Hagman: Each man has his own job and his own position?

The Witness: Yes sir.

Mr. Hagman: And you would ordinarily not be expected 1255 to know accounting matters, operating matters, financial matters, and so forth?

The Witness: I would have no knowledge of those phases of the Great Northern operations.

Q. (By Mr. Loble:) Your job is what? A. In the traffic department of the Great Northern Railway. Rates, divisions and commerce work.

Q. And you don't hear anything about these other things? A. I can only testify as to facts, Mr. Loble.

Q. And we state in our complaint that  $1\frac{1}{2}$ c a cwt. of the revenue being used and allocated, or divided and made available to the Montana Western would pay its operating deficit before interest, is that correct, or do you know? A. I don't recall the exact language of your complaint. I am aware that such an allegation was made during the course of these proceedings. The evidence, the testimony and the exhibits that I have seen do not bear that out.

Q. I meant did you figure it, and if you did would you give us your figures on it? A. On what?

Q. On whether  $1\frac{1}{2}$ c of the average revenue from 1933 to 1948, if  $1\frac{1}{2}$ c per cwt. of the revenue was given by the Great Northern to the Montana Western, if that wouldn't permit the Montana Western to operate without a deficit before interest? A. For the 1256 future?

Q. No, I am talking about the past, and when I filed this complaint, based on the facts that existed then.

Mr. Hagman: Do you know, Mr. McGuire?

The Witness: I don't know. I don't see where it would be material now. We are dealing with the future.

Mr. Loble: Well, we thought it was when we made the complaint.

Q. (By Mr. Loble:) I just want to find out whether you made any computation? A. No, I did not.

Q. Well, we set out in our complaint at the time we filed it that 2.9c per cwt. of revenue that the Great Northern receives, if it went to the Montana Western, would pay its operating deficit after interest. Have you any figures on that?

Mr. Hagman: I object to that as being improper cross-examination, not being within the range of anything the witness was asked on direct examination.

Mr. Loble: I am just asking him if he made any figures on that.

Exam. Witters: He may answer the question.

The Witness: I have made no figures on that.

Q. (By Mr. Loble:) Now you gave us some comparisons on branch roads out in the State of Washington, branch lines? A. Short lines.

Q. Is that what you call them, short lines? A. They are 1257 railway companies.

Q. Other railroads? A. Yes.

Q. There are other conditions that go into that comparison, are there not, a different type of commodity, different locality, different

geography? A. Yes and no. I will have to answer it that way.

Q. Well, that won't do me any good. A. Will you be specific and then I will too.

Q. Will you give me first the yes and then the no.

Exam. Witters: To clarify this, you related it to grain and lumber, didn't you?

The Witness: I cited examples of specific divisions for hauls on grain and lumber.

Q. Well, that makes a difference, doesn't it, Mr. McGuire? A. In what respect?

Q. I am asking you. A. Well, I don't understand your question, Mr. Loble.

Q. You don't? A. No.

Q. The question is whether or not the comparative figures you gave me about Chehalis and the rest of those places are true comparisons, or whether you are talking in the one instance about lumber and in the other instance about grain? A. Well, these comparisons that I made are relative in this respect: those lines 1258 that I have cited on grain for the same or greater hauls receive less than the Montana Western for their hauls. I cited lumber in connection with several of these lines because lumber is a very important commodity to several of those lines, more important than grain, due to the fact that grain is the important commodity with the Montana Western. Those lines receive less on lumber for their hauls than the Montana Western does on grain, and lumber will not load as heavy as grain. Therefore the per car and car-mile revenue of those short lines on lumber is less than yours for the same or greater service.

Q. If I said I understood that I'd want you not to believe me, because I don't. Let me see if you can get nearer home. You have heard of Augusta, Montana? A. Yes.

Q. You have heard of Pendroy, Montana? A. Yes.

Q. And they are very close to Valier, are they not? A. Their proximity to Valier I don't know. They get into that general country, as places are considered out here.

Q. It's about 75 miles according to the map—we have a very good map here that you gave us. A. I have a copy. You are talking about Exhibit 39?

Q. Yes. Now, Pendroy is about how far from Valier on the 1259 Montana Western Railroad? A. Over what route?

Q. Oh, any way you want to go, as the crow flies. There is no railroad between them. A. By rail?

Q. No, not by rail. By automobile. A. I don't know.

Q. Can you tell from that map? A. No sir.

Mr. Hagman: Highways aren't shown here, are they?

The Witness: No sir. This is a railroad map.

Q. (By Mr. Loble:) Choteau is how far? A. I don't know.

Q. Well, it's been said here a while ago—I'm sure you couldn't tell from the map—that Pendroy is about 16 miles, I think, from Valier, and Augusta probably 75. Do you think that would be about right?

Mr. Jardine: Well, I would say that Pendroy is some place between 15 and 20, and Augusta, I've never gone from Valier to Augusta so I don't know.

Q. (By Mr. Loble:) Well, you wouldn't dispute that if we said that it was 22 miles from Pendroy to Valier, and about, let's say 75 miles from Augusta to Valier? You are familiar with those points, are you not, seeing they are on your railroad? A. Yes, they are the end of branch lines of the Great Northern Railway.

1260 Q. And they are a little different than Chehalis in that they are in territory that is quite similar, being in the same state and close by in geography and location and in commodities, are they not? A. Pendroy would appear to be comparable to Valier as to location and geography.

Q. How long is the Pendroy branch line? A. Just a moment. I think I can tell you that. You wanted the extent of the Pendroy line?

Q. Give us Pendroy to Augusta, and Choteau to Augusta. A. Well, I have here, Pendroy to Power, 51 miles.

Q. Give us Pendroy to Choteau. A. Pendroy to Choteau is 22 miles.

Q. So the distances between Pendroy and Choteau and Valier and Conrad are quite comparable, are they not? A. Well, it is within 2 miles.

Q. And the locality is very similar, is it not? A. It appears to be on the map.

Q. Now give us some figures, if you can, on Pendroy to Choteau, some comparative figures, rather than Chehalis or Pacific Coast or some other point, if you have any.

Mr. Hagman: I object to that question on the ground that the comparisons of divisions made by the witness were divisions on independent railroads with a joint rate, and counsel is now asking a question on the theory that the Pendroy line is an independent line. It is not, it is a branch line, and part and parcel of the Great Northern Railway.

Mr. Loble: I know that.

1261 Q. (By Mr. Loble:) Can you give us the revenue per mile that the Great Northern receives from the shipments of grain between Pendroy and Choteau?



Mr. Hagman: Would you make it more specific by saying on what basis the division should be made, whether on a mileage basis or what basis you want him to compute it on.

Mr. Loble: No, I wouldn't.

Exam. Witters: Well, are there proportional rates from Pendroy to the junction?

Mr. Loble: No, I don't suppose so, but I suppose he as a traffic man could tell us what the revenue per mile is.

Exam. Witters: Then what sort of rates does he have there?

Mr. Loble: Whatever their rates are I am sure they are about the same as the Valier rate. I am asking him if he has the figures. Maybe he hasn't got them.

The Witness: No, I don't have them, and it is a single-line movement of the Great Northern Railway.

Exam. Witters: Well, do you have proportional rates from Pendroy to Power then?

The Witness: No sir.

Exam. Witters: Or from Augusta to the junction?

The Witness: To Vaughn?

1262 Exam. Witters: To Vaughn.

The Witness: No sir.

Q. (By Mr. Loble:) Do you have figures there to show the revenue per mile to the Great Northern over the territory that I have described? You don't have them? A. No. You are assuming something, Mr. Loble, on a single-line road.

Q. Yes, this is a suggestion. What is the income per mile on a pro-rate basis? A. I don't know. Where do you want to go?

Q. On a mileage pro-rate I am talking about. A. Where to?

Q. Minneapolis. A. To Minneapolis?

Q. Yes. A. I don't understand your question at all.

Mr. Hagman: On grain, is this?

Mr. Loble: I am talking about grain, yes.

The Witness: From Pendroy do I understand you now?

Q. (By Mr. Loble:) Yes. A. To Minneapolis?

Q. Yes. A. On a carload of grain?

Q. Yes.

Mr. Loble: I am going to ask counsel here if he will frame  
1263 that question for me.

Mr. Booth: Mr. McGuire, will you give us the revenue per mile on a shipment of grain from Pendroy to Minneapolis, giving the revenue per mile on a mileage pro-rate basis from Pendroy to Power?

The Witness: The revenue per mile from Pendroy to Power on a mileage pro-rate would be exactly the same as the revenue per mile for the total distance from Pendroy to Minneapolis.

Mr. Booth: May I have that answer again, please?

The Witness: The revenue from Pendroy to Power per mile would be exactly the same as the revenue per mile for the total movement from Pendroy to Minneapolis on a mileage pro-rate basis.

Mr. Booth: Well, Mr. McGuire, if I am not mistaken I think the rate on wheat from Pendroy or from Great Falls is exactly the same, is it not?

The Witness: That is right.

Mr. Booth: Then in figuring up the revenue which should be allocated to the Pendroy-Power division or branch on a mileage pro-rate basis what would be the revenue which you would assign to the Pendroy branch if you were making a revenue case out of this matter.

The Witness: On a mileage-pro rate?

Mr. Booth: Yes.

The Witness: The manner in which you suggest it be computed? 1264

Mr. Booth: Yes.

The Witness: It would be exactly the same per mile.

Mr. Hagman: He wants it in dollars and cents.

The Witness: Well, that would demand some calculating here. If he wants it it could be worked out.

Exam. Witters: It would depend on what mileage you use, whether it would be the mileage from Pendroy to Power or the points from which this rate applies?

Mr. Loble: He said it didn't make any difference.

Exam. Witters: It might be the same from those two points.

The Witness: I am not an accountant, statistician, Mr. Examiner, but the answer is obvious, because the total distance from Pendroy to Minneapolis takes you through Power, and dividing it over Power and allocating to the branch on a mileage pro-rate your revenue per mile would be exactly the same for each mile of branch as it is for the total service area on the main line.

Mr. Booth: In other words, then, you would merely divide the number of miles into the rate and obtain the rate per mile?

The Witness: The revenue cents per car-mile, you would divide the number of miles into the revenue.

Mr. Booth: And that would then become a matter of computation, and I believe the rate there is 65½c, isn't it?

The Witness: To Minneapolis? That is right.

Mr. Booth: So that it is a matter of computation to determine the car-mile earnings and the ton-mile earnings of that branch? 1265

The Witness: That is right.

Mr. Booth: I think that's all I have.

Q. (By Mr. Loble:) Is that very complicated to figure out? A. No, it is not complicated, it just takes a little time is all.

Q. How much time? A. Oh, not too long.

Q. Roughly, that is. A. Pendroy to Minneapolis,  $65\frac{1}{2}c$  rate, using the same average weight per car on grain, taken from page 2 of Exhibit 45, the per car charge is \$669.08. The mileage Pendroy to Minneapolis is 1095 miles. 61c a car-mile.

Q. 61c a car-mile? A. Yes sir.

Q. Whereas from Valier to Minneapolis you receive 62c per car-mile, according to Exhibit 45, don't you? A. From—

Q. Or not Valier, from Conrad. A. From Conrad to Minneapolis we receive 62c a car-mile.

Mr. Hagman: Now you receive that on a proportional rate of  $62\frac{1}{2}c$ ?

The Witness: That's right.

Mr. Hagman: What do you receive on the local rate of 1266  $65\frac{1}{2}c$ ? A. It would be greater than that.

Q. (By Mr. Loble:) How much? A. I don't know, but it obviously would be greater.

Q. Now the car charge from Pendroy you just said was \$660.00, is that right? A. \$669.08.

Q. And the car rate from Valier is \$730.37, is that right, according to Exhibit 45? A. Well, whatever it shows on page 2 of Exhibit 45. To Minneapolis it shows \$730.37.

Mr. Loble: I believe that's all.

Mr. Hagman: We have no further questions.

Mr. Jardine: I have a few questions.

Q. (By Mr. Jardine:) I would like to ask you, Mr. McGuire, you say that in your opinion a division of what would amount to  $12\frac{1}{2}\%$  on a joint rate, if such a division was established, that is if there was a joint rate in existence at this time, that the division would be on a basis of 12.8%, and I will ask you if such rate was established if you would consider that as a just, reasonable and equitable division between these two railroads, considering the fact that the Montana Western Railway is the originating line? A. Yes, it would be, particularly since the Montana Western Railway as the originating line does not perform all the service that ordinarily would be performed by an originating line.

1267 Q. Then in giving your answer you would say that you have given full consideration to the fact that it is the originating line? A. Yes sir, I have given full consideration to the fact that you are the originating line, that there is some terminal service involved as the originating line, and that your haul in all cases would be that of a short line, a very short line, and for that

reason  $12\frac{1}{2}\%$ , when you consider the Montana Western performs less than  $2\%$  of the haul on the average, is very reasonable.

Q. Do you know of any division made between your railroad and any other railroad where the division under somewhat similar circumstances extends a  $12\frac{1}{2}\%$  or  $12.8\%$  basis? A. No sir, I do not. In many cases it is less where the hauls are under similar circumstances.

Q. You know of none where it is greater? A. No sir.

Mr. Jardine: That's all I have.

Q. (By Mr. Loble:) You don't know of any branch railroad that had a similar arrangement to the arrangement that the Montana Western had with the Great Northern over the years, do you?

A. I previously answered that, aside from joint rates and division of joint rates and division of profits, that knowledge is within my province, and any other arrangements, financial or otherwise, I have no knowledge of it.

Q. You are talking just about rates and division of rates?  
1268 A. That is all.

Q. You don't know of any other branch line where the Great Northern put up the money to build it and financed it afterwards, you don't know anything about that? A. No, I don't know anything more about it than a lot of the other people around here.

Exam. Witters: Do you know of any branch line where they have made up the deficit for 25 years?

The Witness: No sir. You mean another connecting railroad?

Exam. Witters: Yes.

The Witness: No sir, unless the Great Northern had an ownership in the railroad. I had in mind the S. P. & S. Railway, and aside from that I don't know a thing about it. And my knowledge of the S. P. & S. Railroad is from the annual reports, which are a matter of public record.

Exam. Witters: That line is jointly owned by the Northern Pacific and the Great Northern?

The Witness: Yes sir.

Mr. Booth: Mr. McGuire, you are familiar with the last sentence of paragraph 6 in Section 15 of the Interstate Commerce Act, are you not, which prescribes that the Commission in fixing joint rates and charges—I am summarizing now instead of quoting—may take into account the operating efficiency of the railroad and the amount of revenue required to pay respective operating

1269 expenses, taxes, and a fair return, the needs of the public, and any other facts or circumstances which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate fare or charge?



The Witness: I am aware of that, yes sir. That is among other things which the Commission will consider.

Mr. Booth: And in this case there definitely comes into play a question of considering the needs of some 2000 people, 2000 shippers, as shown by the record, and the needs of the community, which is very vitally interested in the production of commodities which can be handled best by rail, is that not a fact?

The Witness: That is all covered by the pending Montana proceedings.

Mr. Booth: And in view of the fact that the two records are consolidated we now get down to a point where the discretion of the Commission is specifically called into existence in order to determine whether or not a greater joint rate or division of rates or rate arrangement of some kind may be necessary in order to protect the public convenience and necessity, isn't that a fact?

The Witness: It is all in the Act.

Mr. Booth: That's all.

Mr. Loble: That's all.

1270 Mr. Jardine: No further questions.

(Witness excused.)

Mr. Hagman: The Great Northern rests.

Mr. Loble: We rest.

Exam. Witters: Any further testimony?

Mr. Loble: Will a proposed report be in effect?

Exam. Witters: There will be a proposed report, yes. Do the parties wish to file briefs?

Mr. Loble: Not now.

Mr. Booth: Unless the Examiner desires it I would prefer to wait until the proposed report is issued, so far as the Board is concerned.

Exam. Witters: How about you, Mr. Jardine?

Mr. Jardine: Well, we are prepared to file a brief at any time after the proposed report is issued. How long do we have?

Exam. Witters: Well, I will fix the time.

Mr. Hagman: As far as the Great Northern is concerned we are not requesting the filing of briefs at this time, unless the Examiner wants it. Of course that does not bar us from filing a brief on exceptions to the proposed report, or anything of that kind.

Mr. Jardine: Well, we are willing to do it on the same basis, whatever the Examiner's desire is.

Exam. Witters: Well, I do not request that the parties file briefs, so that there will be nothing further until the  
1271 proposed report is served on the parties. Is that satisfactory to all parties?

Mr. Jardine: That is satisfactory.

Mr. Loble: Yes.

Mr. Hagman: Satisfactory.

Mr. Booth: Yes.

Exam. Witters: Very well. The hearing is closed.

(Whereupon, at 4:55 p.m. Tuesday, December 6, 1949, hearing in the above-entitled matter was closed.)

[Exhibits 29 through 47, filed at said hearing, omitted in printing]

1308

BEFORE INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 16515<sup>1</sup>

MONTANA WESTERN RAILWAY COMPANY ABANDONMENT

Public convenience and necessity found not to permit the abandonment of the entire line of the Montana Western Railway, insofar as interstate and foreign commerce are concerned. Proceedings held open for a test period.

Joint rates on grain, in carloads, from points on the Montana Western Railway, Valier and Williams, Mont., to all interstate points on the Great Northern Railway found to be necessary and desirable and in the public interest. Reasonable joint rates and just, reasonable and equitable divisions of such rates prescribed.

*Art Jardine* for Montana Western Railway.

*Louis E. Poppler*, Assistant Attorney General of the State of Montana, protestant.

*Edwin S. Booth* and *Horace F. Casey* for State Board of Railroad Commissioners, protestant.

*M. C. Johnson* for Board of County Commissioners, Pondera County, protestant.

*Roscoe C. Lots* for Brotherhood of Railroad Trainmen, protestant.

*H. W. Ansell*, *J. P. Seifert*, *Ralph C. Bricker* for protestants.

*Lester H. Loble* for complainant in No. 30325 and for protestants in F.D. No. 16515.

*R. J. Hagman* for Great Northern Railway.

**Report Proposed by Myron Witters, Examiner**

By application filed March 29, 1949, the Montana Western Railway Company, hereinafter called the applicant, applied for a certificate of public convenience and necessity authorizing the abandonment of its entire line of railway extending between Valier, Mont.,

<sup>1</sup> This report also embraces No. 30325, *Valier Community Club v. Montana Western Railway Company et al.*

and the junction point with the Great Northern Railway, hereinafter called the Great Northern, such junction point being about 2.98 miles from the station of the Great Northern at Conrad, Mont. The application was amended at the hearing to cover operations by the applicant over the tracks of the Great Northern. The entire length of applicant's line, including the operation over tracks of the Great Northern is about 20 miles.

1309 By complaint filed August 1, 1949, Docket No. 30325, as amended, at the hearing in December 1949, the Valier Community Club, a voluntary organization of citizens, seeks the establishment of reasonable joint rates on grain, in carloads, from points on the Montana Western to points on the Great Northern and the establishment of just, reasonable and equitable divisions of such joint rates.<sup>2</sup>

The Board of Railroad Commissioners of the State of Montana filed a motion objecting to the jurisdiction of the Interstate Commerce Commission and moving to dismiss the application, upon the grounds that provisions of section 1 (18) and (20) of the Interstate Commerce Act do not extend to abandonment of an entire railroad system wholly owned and operated within a single State. This motion is based primarily upon the decision of the United States Supreme Court in *Texas v. Eastern Texas R. R. Co.*, 258 U.S. 204. In that case the railroad sought to be abandoned operated entirely within the State of Texas and approximately three fourths of its traffic was interstate and foreign commerce and the remainder was intrastate. The court held that paragraph (18), (19), and (20) of section 1 of the Interstate Commerce Act "should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business".

The applicant has filed an application with the Board of Railroad Commissioners of the State of Montana which is substantially in agreement with the application filed with this Commission. No action has been taken by the Board of Railroad Commissioners on the application before it.

The motion to dismiss for want of jurisdiction should be overruled. Following the Commission's practice in such cases any certificate which may be issued in this proceeding will be limited to operations in interstate and foreign commerce.

Applicant was incorporated under the laws of the State of Montana in 1909. The line was originally constructed in that year from

<sup>2</sup> Rates and divisions of rates will be stated in cents per 100 pounds, except as noted.

Conrad to Valier, a distance of about 20 miles. In 1928 that portion of the line paralleling the tracks of the Great Northern near Conrad was abandoned and a junction with the Great Northern was constructed 2.98 miles north of the station in Conrad. A trackage agreement was entered into with the Great Northern whereby the applicant was permitted to operate over the tracks of the Great Northern for a distance of 2.98 miles. Valier has a population of about 800 and Conrad about 2,000. There are two non-agency stations on applicant's line, Manson 7 miles from Conrad, and Williams 14 miles from Conrad. There is a small station building at Manson and at Williams but no other station facilities. The population of Manson is estimated as 10 and Williams as 11. However, there are two grain elevators at Williams and an elevator devoted entirely to the storage of mustard seed at Manson. The approximate 1310 area served by applicant's line, exclusive of Conrad, is about 553 square miles and a population of about 2,000.

The train service consists of a mixed train which makes a round trip daily, except Sundays. The traffic handled consists of passengers, mail, less-than-carload and carload freight. Express is handled as freight.

The possibility of operating applicant's line on a part-time basis and for freight service only has been under consideration for a long time. It was suggested that operation over tracks of the Great Northern would be discontinued by the construction of an interchange track at junction point and the construction of a wye for turning the locomotive at that point. The cars would then be picked up by the Great Northern at that point. It is estimated that the cost of constructing an interchange track would be \$6,281 and the cost of constructing a wye for turning the locomotive would be \$1,374, making a total cost of \$7,655. It would be impossible, however, under present conditions for applicant to obtain operating crews on a part-time basis. The loss of the mail contract would also mean a loss in revenue of approximately \$2,900 per annum.

The Great Northern and a land irrigation company jointly furnished the money to construct applicant's line. The Great Northern purchased the bonds and the irrigation company subscribed to the stock of the applicant. The Great Northern agricultural agents were active in the years 1910 to 1917 in advertising and bringing settlers to the Valier irrigation project. The advertising literature distributed by the Great Northern stressed the fact that the Valier irrigation project was served by a railroad. From this premise protestants argue that the proposed abandonment is a breach of good faith on the part of the applicant and the Great Northern. The Great Northern is not a party to the application for abandonment,



but when the complaint of the Valier Community Club, No. 30325 was filed, seeking joint rates and divisions of such rates between the applicant and the Great Northern, the Commission by order of October 13, 1949, reopened F.D. No. 16515 for further hearing and disposition upon common record with No. 30325, with the proviso that witnesses previously heard in the abandonment application should be made available for cross-examination by the Great Northern. The Commission should find that the doctrine of Estoppel cannot be appropriately applied in the circumstances shown in this proceeding. The settlers who came to this area appear to have fared much better than the applicant railroad.

The applicant's bonded indebtedness is \$165,000, the entire amount of which is owned by the Great Northern. These bonds dated January 1, 1912, bear interest at the rate of 6 percent. The maturity date has been twice extended to September 1, 1947. No interest has ever been paid and the amount of the principal has never been reduced.

In addition to the bonded indebtedness and unpaid interest, the applicant owes the Great Northern, as of March 31, 1949, \$195,829 for material and supplies, repairs, labor and money advanced to cover operating expenses. The total indebtedness of applicant to the Great Northern at the time of the first hearing in July 1949, was \$737,604. Since 1924 applicant's operating losses have been paid by advances from the Great Northern.

The stock of the applicant consists of 2,000 shares, par value \$100 each. The Valier Company owns 1,995 shares and the other 5 are directors' qualifying shares. In the early part of 1949, after the Great Northern had refused to make further advances to the applicant, the Valier Company advanced \$1,800 to the applicant for operating expenses.

The Valier Company is the successor in interest of three prior companies: the Conrad Land & Water Company, Valier Montana Land & Water Company, and The Valier Montana Land & Water Company. The first of these companies started the construction of the Valier Irrigation project and subscribed to the stock of the applicant railroad. The Valier Company now owns 26,000 acres of land in the vicinity of Valier which is all leased to farmers. On January 10, 1950, since the last hearing in this proceeding, the Supreme Court of the State of Montana in an action for a declaratory judgment brought by the Valier Company against the Carey Land Board for the State of Montana, ruled that the Valier Company is obligated to sell the land it has acquired by foreclosure in actual sales in tracts of not more than 160 acres to any one person. It is probable that this decision will be appealed to the United States Supreme Court.

The stockholders list of the Valier Company as of March 26, 1949, shows the Cargill Securities Company as the owner of 3,859 shares, or about 60 percent of the capital stock of the Valier Company. The Cargill interests are among the largest grain dealers in this country.

Applicant's line was not built according to accepted standards of economical maintenance. Untreated crossties were laid on the ground with practically no ballast. As a result drainage is nil on the greater portion of the line, and the crossties deteriorate rapidly. Normally from 4,000 to 7,000 crossties are replaced each year. At the first hearing applicant's superintendent testified that about 5,000 new crossties were needed for replacement within the next year. At the second hearing applicant's superintendent testified that it was necessary to replace about 8,850 crossties in 1950 for safe operation. This is more than twice the number estimated to be necessary at the first hearing.

All structures are in good condition except the pile bridge over the dry fork Marias which was damaged in the flood of 1948. The cost of repairs to this bridge for safe operation was estimated at \$5,000 at the first hearing and \$5,500 at the second hearing. The weight of the rails is 58 and 60 pounds per yard. The roundhouse will probably have to be replaced in 1952 at a cost of about \$7,000.

Applicant's rolling stock consists of one gasoline electric locomotive, 600 volt, 125 horsepower engine, weighing 72,000 pounds; one steam locomotive, with 3 sets of drivers, weighing 54 tons; and one flat car.

1312. The salvage value of applicant's property is estimated at \$40,000, exclusive of land valued at \$1,643, or a total net salvage value of \$41,643. This estimate is based on current prices as of May 4, 1949.

There are no common carrier motor trucks or motor bus lines serving stations on applicant's line, except Conrad. There are motor truck and motor bus services daily on the federal highway No. 91 running north and south through Conrad. An oil surfaced highway runs between Valier and Highway No. 91 and the highway distance between Conrad and Valier is 23 miles. A graveled highway runs southwest from Valier connecting with U. S. Highway No. 89.

As previously stated, over a period of more than 25 years the Great Northern has made advances to the applicant to cover its operating losses. By letter dated November 21, 1923, the vice-president of the Great Northern addressed a letter to the secretary of the applicant stating as follows: "In a general way I can say we expect to see that the Montana Western is taken care of to the extent it is unable to take care of itself". There was a similar letter

from the Great Northern addressed to the secretary of the applicant dated December 20, 1937. In August 1947, the vice president and general counsel of the Great Northern wrote to the applicant suggesting a 10-year extension of the mortgage bond from September 1, 1947 to September 1, 1957. Following this the Great Northern engineers in the Fall of 1947 made an inspection of applicant's line and formulated an 8-year rehabilitation program involving an expenditure of \$171,000. In due course the Great Northern advanced to the applicant sufficient money to accomplish a portion of the program allocated during the year 1948. However, the completion of the 1948 portion of the program was prevented by a flood. The portion of the program allotted to 1948 involved an expenditure of \$27,295, of which \$17,000 was spent in 1948. On July 28, 1948, the Great Northern again requested the officers of the applicant to extend the mortgage bond. The applicant's officers declined to extend the mortgage bond on the ground that there was no hope of paying the indebtedness; and suggested that the Great Northern take over the properties of the applicant, and offered to execute a deed in lieu of foreclosure. On December 18, 1948, the Great Northern advised the officers of the applicant as follows: "A continuation of the rehabilitation program on the Montana Western is of no particular advantage to the Great Northern. In view of the Montana Western's attitude, as outlined in your letter, the Great Northern cannot be expected to advance any further cash or materials to the Montana Western in furtherance of its rehabilitation program". By letter of March 1, 1949, the Great Northern again advised that no further advances of funds or materials and supplies would be made to the applicant.

The average number of employees in 1933 was 13 and in 1948, 13.3. The total compensation of all employees in 1933 was \$12,593 and in 1948, \$40,174, an increase of 311 percent. Applicant's employees are paid the same rate of pay per day as employees of the Great Northern. However, they are not covered by the same working rules. They are covered by and enjoy the benefits of the Railroad Retirement Act. Their seniority applies only on the line of the applicant. The trainmen, through their representative, 1913 request that in the event of abandonment, conditions be imposed for the protection of employees. If the applicant is authorized to abandon its entire operations no conditions can be imposed for the protection of employees.

About 96 percent of the total freight traffic of the applicant is interstate. During the past five years 91 percent of the total tonnage carried by applicant and 97 percent of the outbound tonnage has consisted of products of agriculture. The agricultural products carried consisted principally of wheat, oats, barley, and mustard

seed. In 1946 and in 1947, 96 percent of the total tonnage consisted of grain. There is also a small tonnage of sugar beets. In 1947 the applicant carried 883 carloads and 760 tons of less-than-carload freight. In 1948 applicant carried 540 carloads and 663 tons of less-than-carload freight.

During the 16 years 1933 to 1948, both inclusive, the tonnage of products of agriculture carried averaged 27,662. The average number of tons of grain carried during the 15 years 1934 to 1948, both inclusive, was 23,586, and in the years 1939 to 1948, both inclusive, 25,774. So far as the grain traffic is concerned the record shows no decline, but on the other hand an increase during the last 10 years. The tonnage of grain carried in 1947 was 39,079. Assuming a weight of 50 tons per car, this amounted to 781 carloads.

Abandonment of applicant's line would mean that grain producers in the areas served by the applicant would have to haul their grain about 25 miles to a railroad instead of an average haul of  $7\frac{1}{2}$  miles to a point on applicant's line. This raises the question as to whether grain elevators now located on applicant's line would be abandoned if the applicant's line were abandoned. Storage elevators or other local storage facilities are approved by the government loaning authorities. The transportation charges from the point of storage must be paid by the Commodity Credit Corporation if the loan is not redeemed. If the grain is sold on the open market, then the transportation charges are paid by either the buyer or seller. Under present conditions most of the grain is put in storage under the government loan plan, and becomes the property of the Commodity Credit Corporation when the loan is not redeemed. Under present conditions which have obtained during 1948 and 1949 the elevators located on applicant's line and at Conrad and other points in this general territory have been filled to capacity. Farmers have therefore been urged to provide their own storage space and the Government allows 7 cents a bushel for a storage charge on grain which is under loan. The Government did not allow for the storage of barley under loan in 1948 but in 1949 the Government allowed 10 cents a year for storage of wheat or barley. It costs about 15 cents per bushel to provide facilities for grain storage in this territory.

Grain from the territory served by the applicant is also hauled to Cut Bank, Shelby, and Pendroy, Mont., points on the Great Northern, and to Agawam, Mont., on the Chicago, Milwaukee, St. Paul & Pacific Railroad. During the year 1949 when elevator storage space on applicant's line was mostly filled, grain producers in this area were forced to truck their grain to such points, whereas ordinarily they would have hauled such grain to Valier or Williams on applicant's line.



1314 Shelby is an inspection point for grain. There are elevator storage facilities available at that point and transit arrangements in effect. The destinations to which carloads of grain originating at Valier or Williams are shipped can best be ascertained by examination of the destinations to which grain is reconsigned after inspection at Shelby. The months of heaviest grain movement from Valier to Shelby during 1946, 1947, 1948 and the first nine months of 1949 were selected for study. This study shows that 61.8 percent of the cars of grain from Valier reconsigned from Shelby, moved to eastern terminals, Minneapolis and Duluth, Minn., Grand Forks, N. Dak., and other points taking the same rates, as defined in Great Northern Railway Tariff I.C.C. A-8352; 29 percent moved to north coast terminals, Seattle and Tacoma, Wash., Portland, Oreg., and other points taking the same rates, as defined in Agent W. J. Bohon's Tariff I.C.C. No. 798; and 9.2 percent moved to Spokane, Wash. Spokane takes a lower rate than the north coast terminals.

Most of the farmers in the area served by applicant ship their cattle by truck either to Great Falls or Shelby. A few cars of sheep are handled on applicant's line. In the years 1938 to and including 1941, an average of 282 cars of sugar beets were shipped out over applicant's line. In 1946 and 1947 no cars of sugar beets were handled by applicant and in 1948 only 14 cars were handled. It appears that grain crops have been more profitable than sugar beets in recent years. Sugar beets from Valier and Conrad moved to a refinery at Chinook, Mont. The distance from Valier to Chinook via Conrad and Shelby is about 157 miles. The rate from Valier to Conrad is 51 cents per ton and from Conrad to Chinook \$1.27 per ton. There is no joint rate from Valier to Chinook and the combination rate is \$1.78 per ton. The ratio of the rate from Valier to Conrad to the through combination rate is 28.6 percent. The ratio of the distance from Valier to Conrad, 20 miles, to the entire distance of 157 miles is 12.73 percent.

The city of Valier is served by a natural gas pipe line and natural gas is generally used for heating purposes. This has reduced the tonnage of coal on applicant's line.

The most significant figure under our uniform system of railroad accounts is the net railway operating income. This figure represents net revenue from railway operations, less railway tax accruals, less joint facilities and equipment rents. The net railway operating income of the applicant is shown below for the years 1944 to 1948 and for the first 10 months of 1949:

1944	1945	1946	1947	1948	Jan. 1 to Oct. 31, 1949
\$ 833	*\$16,728	*\$5,466	*\$14,670	*\$27,107	\$2,904
*—Deficit					

It will be noted that in 1944 and in the first 10 months of 1949 the applicant operated at a profit, except for the payment of interest on its bonded indebtedness. The average annual deficit in net income for the years 1933 to 1948 was \$18,672. The applicant's cash balance on October 31, 1949, was \$29,417.

1315 The traffic carried by the applicant was subnormal in 1948 by reason of the fact that the grain was held in the elevators generally under the government loan plan and was not moved out during the year. By reason of the fact the elevators on the applicant's line were filled with grain, some grain was trucked to other points. In 1949, however, more than the usual number of carloads of grain have moved out over applicant's line. This heavy movement began in August after the car shortage during June and July. In August, September and October 1949, 190, 220 and 63 carloads, respectively, of grain were shipped out on applicant's line. Although the record does not show applicant's revenue and expenses through November, it does show that there was an additional movement outbound of 45 carloads of grain in that month. This makes a total of 518 carloads of grain which moved out during 4 months, August to November.

The area served by applicant's line produces from 800,000 to 1,000,000 bushels of grain annually. The wheat produced has a high protein content. Crop failure are very rare since a part of the grain is raised on irrigated land.

There are six grain elevators located on applicant's line and one elevator at Manson which is devoted to the storage of mustard seed. At the time of the first hearing there were seven grain elevators, but the Farmers' Union Elevator at Valier was totally destroyed by fire. Cargill, Incorporated, owns two grain elevators in Valier and it was stated on their behalf that these two elevators would be continued in operation in the event that the applicant's line is abandoned. There are two other grain elevators located in Valier, one with a capacity of 40,000 bushels and the other with a capacity of 85,000 bushels. It is very doubtful whether these two elevators would continue to operate if the applicant's line is abandoned. There are two grain elevators located at Williams with a total capacity of 80,000 bushels. It is doubtful whether these two elevators would continue to operate if applicant's line is abandoned. It is also doubtful whether the elevator at Manson now used for mustard seed would continue to operate if applicant's line is abandoned.

There is a bulk oil storage plant at Williams. However, most of the oil stored in this plant is now brought in by motor truck. It normally comes in by tank trucks of 5,000 gallon capacity. The

weight of 5,000 gallons of gasoline would be about 35,000 pounds in addition to the weight of the tank truck.

Revenue from passenger operations was \$414 in 1947 and \$259 in 1948. The saving in operating expenses from the discontinuance of passenger service would be very slight as a passenger car or caboose is needed for the trainmen.

The key grade of Valier is three percent. It is located about a mile out of town and is against the loaded movement outbound from Valier. This grade limits the amount the steam locomotive can pull out of Valier to eight carloads and the gasoline and electric locomotive to two carloads of grain. The steam locomotive can pick up two more cars at Williams and the gasoline and electric locomotive one more car and handle the train into Conrad.

1316 In 1928 the assessed valuation of applicant's property for state and county tax purposes was \$180,095 and in 1949, \$117,100. The assessed value of all real and personal property in Valier in 1939 was \$569,090 and in 1948, \$1,002,239. The applicant's state and county taxes for 1949 amounted to \$4,400 and have not been paid. Likewise, one-half of the 1948 taxes, \$1,900, has not been paid. State and county authorities are both here opposing this application. A reduction of applicant's assessed valuation would be appropriate under the circumstances.

Applicant obtains its freight cars from the Great Northern under a per diem arrangement. On November 1, 1950, the per diem charge for freight cars became \$1.75 per car per day. The arrangement between the applicant and the Great Northern is substantially as follows: (1) With respect to an empty car delivered by the Great Northern to the Montana Western, the per diem charge commences only from the time the Montana Western spots the car for loading and terminates with delivery of the car to the Great Northern, which period is adjusted to allow the Montana Western two days free time as a maximum; (2) with respect to a car delivered by the Great Northern to Montana Western under load, the per diem commences from the time of delivery of the car to the Montana Western until it is returned to the Great Northern under load, the per diem is charged as follows: Per diem begins from the time the loaded car is delivered to the Montana Western until it is unloaded. There is no charge of per diem during the period the Montana Western holds the car for prospective loading. Per diem commences again when the Montana Western places the car for loading and per diem continues until the loaded car is delivered to the Great Northern, subject to a maximum of two days free time on each of the loaded movements.

The rates on grain from points on applicant's line have always been proportional rates based on Conrad. There are no joint

through rates on grain. The present proportional rate from points on applicant's line to Conrad resulted from an agreement made in 1924 after an investigation by the Board of Railroad Commissioners of Montana.

Joint through rates are in effect between points on applicant's line and points on the Great Northern on many commodities. About five percent of the tonnage of carload freight traffic carried by the applicant moves on joint through rates with the Great Northern.

The proportional rate on grain from Valier to Conrad is 9 cents and from Williams to Valier 8.5 cents. The proportional rate from Conrad to Minneapolis, Minn. and points taking the same rate is 62.5 cents, making a combination rate of 71.5 cents from Valier and 71 cents from Williams. The proportional rate from Conrad to Seattle, Wash. and points taking the same rate is 58.5 cents, making a combination rate of 67.5 cents from Valier and 67 cents from Williams. The proportional rate from Conrad to Spokane, Wash. is 56 cents making a combination rate of 65 cents from Valier and 64.5 cents from Williams. The local rates from Conrad are 3 cents higher than the proportional rates to Minneapolis, 2½ cents higher than the proportional rates to Seattle, and 3.5 cents higher than proportional rates to Spokane. These rates are not attacked

1317 as being unreasonable, but the complainant, Valier Community Club, in No. 30325 seeks the establishment of joint rates and just, reasonable and equitable divisions of such rates to points on the Great Northern. The joint rates which it seeks are the same as the present combination of proportional rates now in effect. Complainant seeks a greater division of the joint rates to be established than it now receives from its proportional rates to Conrad. The general basis of divisions of joint rates of the applicant with the Great Northern is 12.5 percent of the through rate, or the proportion of the through rate accruing west of the Great Northern eastern terminals or west of Omaha, Nebr. and Kansas City, Mo. These divisions apply to all freight except as otherwise provided. There are some specific divisions in stated amounts on commodities such as coal, cement, and plaster. The 12½ percent basis applies on livestock, subject to a maximum proportion of \$15.75 per car in 1939. This maximum would now be \$23.47. On lumber from Montana, Washington, Idaho, Oregon and British Columbia to Valier, to specific division applicable in 1939 was 6.3 cents. From points in Wyoming to Valier the specific division on joint rates on petroleum products was 6.5 cents in 1939. Because of the maximum increases authorized on and after June 20, 1946, and the method provided for increasing divisions where such divisions were a fixed amount, it is impossible upon the record to determine what the present divi-



sions are on lumber and petroleum products. The rates to which these specific divisions in stated amounts apply are not shown.

The proportion of the through rates on grain received by the applicant in the form of its proportional rates are clearly in excess of a mileage prorate. The relative distance and percentages are shown below:

From	To	M.W.	Distance in Miles		Total
			Per Cent	G.N. Per Cent	
Valier	Minneapolis	20	1.9	1030	1050
	Spokane	20	4.2	457	477
	Seattle	20	2.5	788	808

The revenues per ton-mile and per car-mile under the present rates on grain from Valier to Minneapolis, Spokane and Seattle, accruing to the applicant, and accruing to the Great Northern are shown by the following table:

Montana Western				Great Northern			
Per Car	Per Cent	Mills Ton-Mile	Cents Car-Mile	Per Car	Per Cent	Mills Ton-Mile	Cents Car-Mile
\$91.94 <sup>1</sup>	12.6	90	459.7	\$838.43	87.4	12.14	62
91.94	13.8	90	459.7	572.04	86.2	24.51	103.3
91.94	13.3	90	459.7	597.57	86.7	14.85	75.8

<sup>1</sup>Average load 102,149 pounds.

1318 A rate prorate using the present proportional rates based on Conrad gives the following percentages:

From	To	Proportional Rate to Conrad		Proportional Rate from Conrad		Total Rate
		(cents)	(Per-cent)	(cents)	(Per-cent)	
Valier	Minneapolis	9	12.59	62.5	87.41	71.5
	Spokane	9	13.85	56	86.15	65
	Seattle	9	13.33	58.5	86.67	67.5

The present first-class rates from Conrad to Minneapolis, Spokane, and Seattle are \$5.12, \$2.94, and \$4.33, respectively. The class rates from western trunk-line and official territories to eastern and central Montana, including the territories served by the applicant were prescribed by the Commission in *Great Falls Traffic Association v. Chicago, B. & Q. R. Co.*, 226 I.C.C. 467, 235 I.C.C. 459. The present first-class interstate rates from Valier and Williams to Conrad are 53 cents and 48 cents, respectively. A first class rate prorate from Valier to Minneapolis, Spokane, and Seattle gives the following percentages for the factor of 53 cents from Valier to Conrad: 9.38 percent, 15.27 percent, and 10.90 percent, respectively.

From Williams to Minneapolis, Spokane and Seattle a first-class rate prorated gives the following percentages for the factor of 48 cents from Williams to Conrad: 8.57 percent, 14.03 percent, and 9.97 percent, respectively.

Pendroy, Mont. is located at the end of a branch line of the Great Northern 51 miles from the junction point, Power, Mont. In 1948 the outbound movement from this branch consisted of 801 carloads. Augusta, Mont. is located at the end of a branch line of the Great Northern connecting with the main line at Vaughn, Mont., a distance of 42 miles. The outbound movement from this branch in 1948 was 502 cars. Agawam, Mont. is located at the end of a branch line of the Chicago, Milwaukee, St. Paul & Pacific Railroad 66 miles from Great Falls, Mont. In 1948 the outbound movement from this branch was 127 cars. It appears that applicant line produced more traffic per mile of road than either the Pendroy and Augusta branches of the Great Northern or the Agawam branch of the C. M. St. P. & P. Railroad. The grain rates from Pendroy, Augusta and Agawam are substantially the same as the rates from Conrad, there being a half cent difference from Agawam to Minneapolis and a half cent difference from Pendroy, Augusta, and Agawam to Spokane. The grain rates from and to these points are shown by the following table:

From	Minneapolis (Cents)	To Seattle (Cents)	Spokane (Cents)
Pendroy	65½	61	61
Augusta	65½	61	61
Agawam	66	61	61
Conrad	65½ <sup>1</sup>	61	59½
	62½ <sup>1</sup>	58½ <sup>1</sup>	56½

<sup>1</sup>Applies only as a proportional rate on traffic originating on the Montana Western.

The rate on grain from Great Falls to Minneapolis is 65.5 cents the same as the rate from Conrad, Pendroy, and Augusta, 1319 the rate from Agawam being one-half cent higher. The rate on grain from Great Falls to Seattle is 61 cents, the same as from Pendroy, Augusta, Agawam, and Conrad.

From Conrad to Minneapolis, 1,036 miles, car-mile revenue of Great Northern under its proportional rate of 62.5 cents is 62 cents; from Pendroy to Minneapolis, 1,095 miles, the car-mile revenue of the Great Northern under its rate of 65.5 cents is 61.1 cents. A division of 61.5 cents from Conrad to Minneapolis would yield 61 cents per car-mile. If the combination rate of 71.5 cents from Valier to Minneapolis were made a joint rate and divided 10 cents to applicant and 61.5 cents to the Great Northern, the latter would

still receive substantially the same revenue per car-mile as it now receives from Pendroy. The resulting percentages would be 13.99 percent to the applicant and 86.91 percent to the Great Northern.

If the combination rate of 65 cents from Valier to Spokane were made a joint rate and divided 10 cents to the applicant and 55 cents to the Great Northern the percentages would be 15.39 percent to the applicant and 84.61 percent to the Great Northern. If the combination rate of 67.5 cents from Valier to Seattle were made a joint rate and divided 10 cents to the applicant and 57.5 cents to the Great Northern the percentages would be 14.82 percent to the applicant and 85.18 percent to the Great Northern.

The Cowlitz, Chehalis & Cascade, a short line railroad, which connects with the Great Northern at Chehalis, Wash., receives a division of 7.8 cents for a haul of 15 miles on grain to eastern transcontinental destinations. On grain to north Pacific coast destinations where the measure of the rate is less it receives a division of 5.6 cents. This railroad originates a substantial amount of lumber, and on lumber to eastern destinations it receives a division of 5.1 cents for a 15-mile haul and 15.5 cents for a 20-mile haul.

The Pacific Coast Railroad which connects with the Great Northern at Seattle and Black River, Wash., receives a division of 5.9 cents on grain for hauls ranging from 2 to 18 miles to north Pacific coast points or Montana. On lumber on hauls ranging from 2 to 18 miles it receives a division of 8.3 cents out of the present rate of 96.5 cents to Minneapolis representing 8.60 percent.

The Washington, Idaho & Montana Railway which connects with the Great Northern at Palouse, Wash., receives a division of 7.6 cents on grain to north Pacific coast points on hauls ranging from 4 to 47 miles.

The Portland Traction Company which connects with the Great Northern at Portland receives a division of 7.6 cents on grain for hauls of 6.23 miles to north Pacific coast and Montana points.

The Waterville Railway which connects with the Great Northern at Douglas, Wash., for a haul of five miles receives a division of 3.9 cents on grain to north Pacific coast, Montana or transcontinental destinations.

1320 The Commission's order in *Tap Line Case*, I. & S. No. 11, as amended August 29, 1949, provides for maximum switching charges or divisions which may be paid to the Tap Lines by trunk lines out of the rates on interstate shipments of lumber and forest products. The maximum switching charge or divisions allowed for distances over 10 miles and not more than 20 miles from the junction is 5.5 cents, and over 20 miles and not over 40 miles from the junction, 7.5 cents.

## FINDINGS

The Commission should find that public convenience and necessity do not permit the abandonment of the entire line of the Montana Western Railway, insofar as interstate and foreign commerce are concerned. However, the proceeding should be held open for a test period of 18 months after the joint rates on grain and the divisions of such rates herein prescribed as just, reasonable, and equitable, have become effective. Operation of applicant's line on a profitable basis will depend upon the loyal support of shippers in the Valier community.

The Commission should further find that it is necessary and desirable in the public interest that joint through rates on grain, in carloads, should be established from Valier and Williams to all interstate points on the Great Northern; that these joint through rates should be the same as the present combinations of proportional rates based on Conrad; and that the just, reasonable, and equitable divisions of such rates should be as follows: From Valier and Williams to all interstate points on the Great Northern 10 cents, and 9.5 cents, respectively, to the Montana Western Railway.

1322  
BEFORE INTERSTATE COMMERCE COMMISSION

May 4, 1950

(Title omitted)

**Notice of Date for Oral Argument**

The above-entitled proceedings are assigned for Oral Argument on June 7, 1950, at 10:00 o'clock a.m., United States Standard Time (or 10:00 o'clock a.m. District of Columbia Daylight Saving Time, if that time is observed) at the Office of the Interstate Commerce Commission, Washington, D. C., before the Commission.

By the Commission.

W. P. BARTEL,  
*Secretary.*

1322  
[Report and order of Interstate Commerce  
Commission filed and entered July 31, 1950  
Omitted. Printed side page 18 ante]

1345  
[Order of Interstate Commerce Commission, Sept. 27, 1950  
extending time for filing petitions for reconsideration  
omitted. Printed side page 43.]



## 1346 "BEFORE INTERSTATE COMMERCE COMMISSION

(Title Omitted)

PRESENT: CLYDE B. AITCHISON, Acting Chairman, to whom the above-entitled matter has been assigned for action thereon.

**Order Extending Time for Filing Petition for Reconsideration**

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of letter request on behalf of The Montana Western Railway Company for extension of time for filing petition for reconsideration in Finance Docket No. 16515; and for good cause appearing:

*It is ordered.* That the time for filing petitions for reconsideration in Finance Docket No. 16515 be, and it is hereby, extended to November 13, 1950.

Dated at Washington, D. C., this 4th day of October, A.D. 1950.

By the Commission, Acting Chairman Aitchison.

W. P. BARTEL,  
*Secretary.*

1347

[Order of Interstate Commerce Commission,  
November 7, 1950  
Omitted. Printed side page 45 ante.]

1348

[Order of Interstate Commerce Commission,  
December 4, 1950  
Omitted. Printed side page 47 ante.]

1349

BEFORE INTERSTATE COMMERCE COMMISSION

(Title Omitted)

In the matter of the request of the court for postponement of the effective date of the order.

PRESENT: WILLIAM E. LEE, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

**Order Postponing Effective Date**

Upon consideration of the request of the District Court for the District of Minnesota that the effective date of the Commission's order in the above-entitled proceedings be postponed, and for good cause appearing:

*It is ordered*, That the order entered in said proceedings of July 31, 1950, which was subsequently modified to become effective January 15, 1951, upon not less than one day's notice, be, and it is hereby, further modified to become effective March 1, 1951, upon not less than one day's notice.

Dated at Washington, D. C., on this 21st day of December, A.D. 1950.

By the Commission, Commissioner Lee.

W. P. BARTEL,  
Secretary.

[File Endorsement Omitted]

1350

BEFORE INTERSTATE COMMERCE COMMISSION

November 28, 1949

No. 28300

CLASS RATE INVESTIGATION, 1939

**Notice of Proposed Rule Making—Filed February 20, 1951**

Further investigation will be conducted by the Commission in the above-entitled proceeding.

*Authority for and Nature of Investigation.* The investigation will be governed by the pertinent provisions of the Administrative Procedure Act and the Interstate Commerce Act. The general procedures and special rules of practice provided herein will apply.

*Scope and Purpose of Investigation.* The scope and purpose of the investigation are:

1. To revise the basic scale of class rates set forth in Appendix 10 to the original report herein, 262 I.C.C. 447, in order that such scale may conform to the present and prospective requisites of a just, reasonable, and lawful basic scale of class rates to be applied in connection with a uniform freight classification now under preparation in Docket No. 28310; and

2. To determine what, if any, arbitraries should be added to the basic scale of class rates for the benefit of short-line and weak railroads, so-called.

*Reasons for Investigation.* The Commission has been informed that the work of preparing a uniform freight classification by the

railroads respondents in Docket No. 28310, a companion proceeding, is nearing completion, and it takes official notice of the fact that since the prescription of the basic class rate scale in its original decision in this proceeding general increases have been authorized, as briefly described in Appendix B, in the level of rates in the territory within which the original scale was intended to apply. Moreover, the question of arbitraries for short-line and weak railroads, so-called, was left undetermined in the original decision. These are the considerations leading to this further investigation.

*Proposed Basic Scale of First Class or Class 100 Rates.* A scale of rates tentatively proposed as a substitute for the basic scale of first class, or class 100, rates included in the original report in this proceeding as Appendix 10 is contained in Appendix A, attached hereto. This proposed scale is subject to any change or changes that may be made therein as a result of this investigation. The scales subordinate to this basic first class, or class 100, scale are to be determined by use of the percentages set forth in the original report herein. It should be clearly understood that no party in interest in this proceeding is precluded from proposing and supporting another and different scale from that tentatively proposed herein.

*Written Evidence; Special Rules.* Evidence shall be submitted in written form at the times and in the manner provided for in the attached Special Rules of Practice, marked Appendix C.

1351 *Notice to Parties in Interest.* Notice to the general public will be given by depositing a copy of this notice in the office of the Secretary of the Commission, for public inspection, by filing a copy of the notice with the Director, Division of the Federal Register, and by serving copies on the parties of record in this proceeding.

By the Commission:

W. P. BARTEL,  
Secretary.

(Seal)

## Appendix "A" to Notice

Original Appendix 10 scale and proposed scale  
of first-class rates (class 100)

for application in all territory covered by No. 28300  
(Cents per hundredweight)

Miles	Original Appendix 10 Scale <sup>1</sup>	Proposed Scale <sup>2</sup>	Miles	Original Appendix 10 Scale <sup>1</sup>	Proposed Scale <sup>2</sup>
5	40	58	380	122	201
10	43	64	400	125	206
15	46	69	420	128	211
20	48	73	440	131	216
25	50	76	460	134	221
30	52	80	480	137	226
35	54	83	500	140	231
40	56	86	520	143	236
45	58	89	540	146	241
50	60	91	560	149	245
55	61	94	580	152	250
60	62	96	600	155	255
65	63	99	620	158	259
70	64	101	640	161	264
75	65	103	660	164	268
80	66	106	680	167	273
85	67	108	700	170	277
90	68	110	720	173	282
95	69	112	740	176	286
100	70	114	760	179	291
110	72	118	780	182	295
120	74	122	800	185	299
130	76	126	825	189	305
140	78	129	850	193	310
150	80	132	875	196	315
160	82	136	900	199	320
170	84	140	925	203	326
180	86	143	950	207	331
190	88	146	975	210	336
200	90	149	1,000	213	341
210	92	153	1,025	217	346
220	94	156	1,050	221	351
230	96	159	1,075	224	356
240	98	162	1,100	227	361
260	102	168	1,125	231	366
280	106	173	1,150	234	371
300	110	179	1,175	237	376
320	113	185	1,200	240	381
340	116	190	1,225	244	386
360	119	196	1,250	247	391



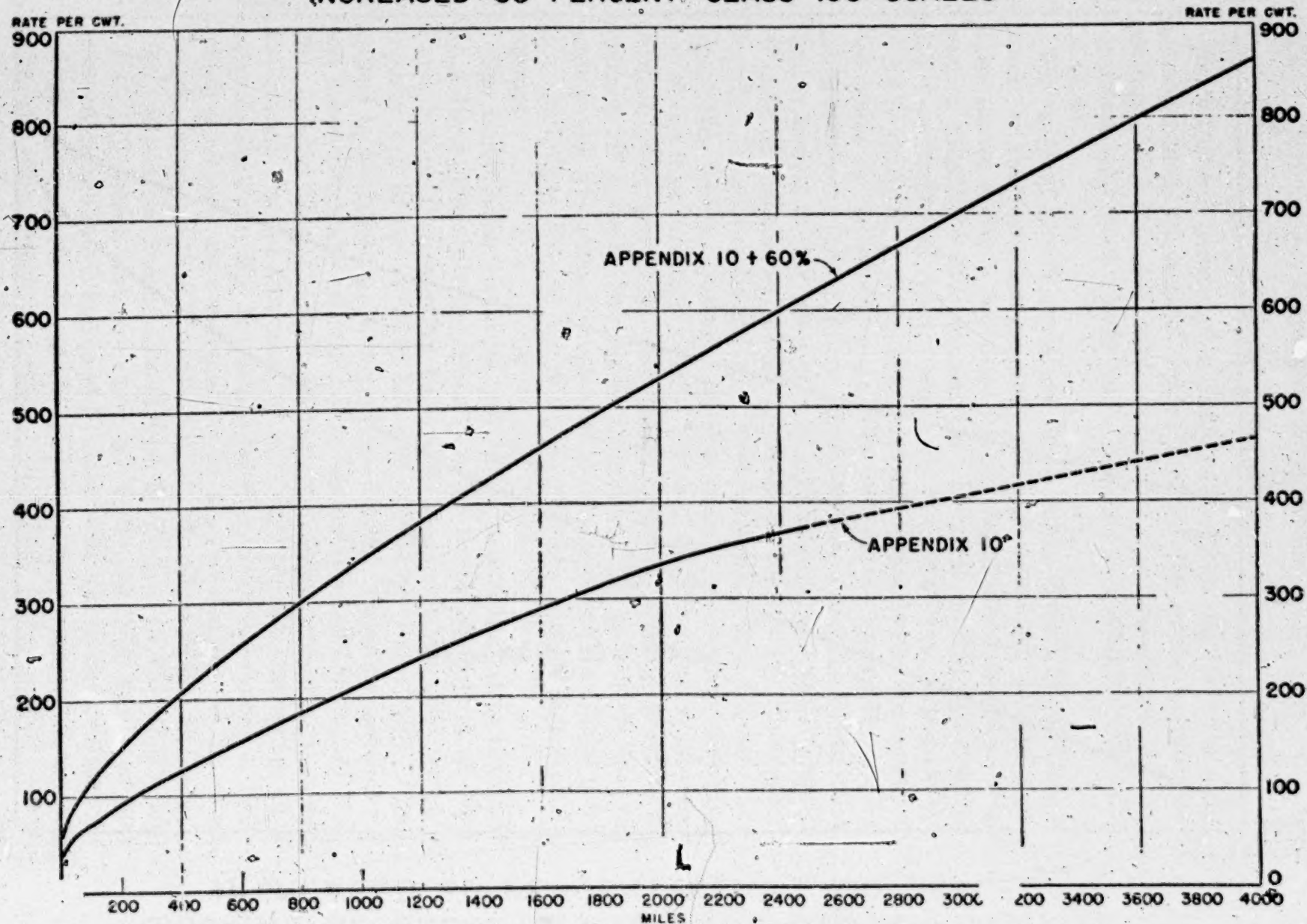
Original Appendix 10 scale and proposed scale  
of first-class rates (class 100)  
for application in all territory covered by No. 28300  
(Cents per hundredweight)—Continued

Miles	Original Appendix 10 Scale <sup>1</sup>	Proposed Scale <sup>2</sup>	Miles	Original Appendix 10 Scale <sup>1</sup>	Proposed Scale <sup>2</sup>
1,275	250	396	2,150	349	556
1,300	253	401	2,175	351	560
1,325	257	405	2,200	353	565
1,350	260	410	2,250	357	573
1,375	263	415	2,300	361	582
1,400	266	420	2,350	365	591
1,425	269	424	2,400	368	599
1,450	272	429	2,450	372	608
1,475	275	434	2,500	375	616
1,500	278	439	2,550	379	625
1,525	281	443	2,600	382	633
1,550	284	448	2,650	386	642
1,575	287	453	2,700	389	650
1,600	290	457	2,750	393	658
1,625	293	462	2,800	396	667
1,650	296	466	2,850	400	675
1,675	299	471	2,900	403	683
1,700	302	476	2,950	407	692
1,725	305	480	3,000	410	700
1,750	308	485	3,050	414	708
1,775	311	489	3,100	417	717
1,800	313	494	3,150	421	725
1,825	316	498	3,200	424	733
1,850	319	503	3,250	428	741
1,875	322	507	3,300	431	749
1,900	324	512	3,350	435	757
1,925	327	516	3,400	438	765
1,950	330	521	3,450	442	774
1,975	332	525	3,500	445	782
2,000	334	529	3,550	449	790
2,025	337	534	3,600	452	798
2,050	340	538	3,650	456	806
2,075	342	543	3,700	459	814
2,100	344	547	3,750	463	822
2,125	347	552	3,800	466	830
			3,850	470	838
			3,900	473	846
			3,950	477	853
			4,000	480	861

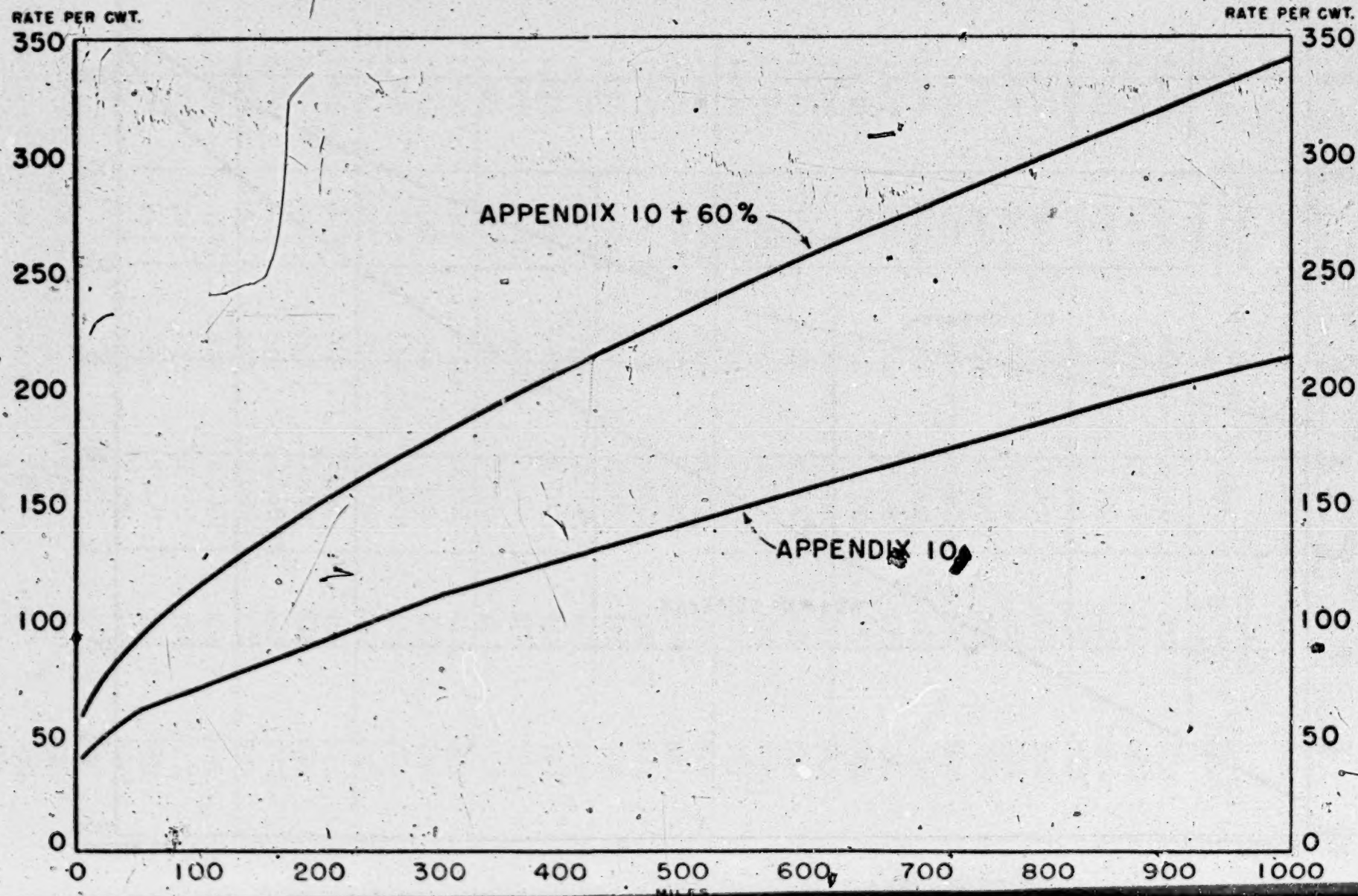
<sup>1</sup> 262 I.C.C. 447, at page 766, extended from 2,500 to 4,000 miles.

<sup>2</sup> The original Appendix 10 scale increased 60 percent and smoothed.

# ORIGINAL APPENDIX 10 AND SMOOTHED APPENDIX 10 INCREASED 60 PERCENT—CLASS 100 SCALES



ORIGINAL APPENDIX 10 AND SMOOTHED APPENDIX 10  
INCREASED 60 PERCENT-CLASS 100 SCALES





1356

## Appendix "B" to Notice

*Prior Proceedings*

No. 28300 was instituted in 1939, and on May 15, 1945, the Commission issued its original report and interim order in this proceeding, 262 I.C.C. 447, and on October 30, 1945, issued its first supplemental report clarifying its findings and interim order, 264 I.C.C. 41.

The original report contained three parts: Part I found the existing freight classifications unlawful and stated the general principles under which a uniform freight classification for the entire country should be constructed. Part II, after finding the existing class rates unlawful, found reasonable for the future, in connection with the uniform freight classification, a uniform distance scale of class rates in the territory roughly east of the Rocky Mountains, hereinafter referred to as the Appendix 10 scale. The Commission further provided that the uniform classification and the Appendix 10 scale of class rates should be made applicable simultaneously. Part III found reasonable an interim adjustment as follows: The class rates within southern, southwestern, and western trunkline territories and interterritorially between those territories and also between those territories and official territory were ordered to be reduced 10 percent, subject to a minimum scale (which was the same as the Appendix 10 scale). The class rates within official territory, including Illinois territory, were ordered to be increased 10 percent.

The Commission's reports and order were temporarily enjoined by a three-judge district court for the northern district of New York, but on final hearing that court sustained the Commission's reports and order in their entirety. (65 Fed. Supp. 856) Upon appeal to the Supreme Court of the United States the decision of the lower court was affirmed. *New York v. United States*, 331 U.S. 284, decided May 12, 1947. In the meantime the Commission had authorized general increases in all freight rates, including class rates, in Ex Parte No. 162, which became effective January 1, 1947, which increases were referred to in the opinion of the Supreme Court, *supra*, pp. 349-350. Thereafter, the Commission on July 7, 1947, issued its Second Supplemental Report in No. 28300, 268 I.C.C. 577, which embraced also Ex Parte No. 162, so far as that proceeding related to increases in class rates within the territory involved in No. 28300. Respondent carriers were required to comply with the Commission's original [interim] order in No. 28300, without prejudice to the filing of new tariffs increasing class rates in the territory covered by No. 28300 by 22.5 percent in lieu of the general increases in class rates authorized in Ex Parte No. 162. The



Commission's order in Ex Parte No. 162 was modified accordingly. Thereafter the carriers complied with the order in No. 28300 and superimposed an increase of 22.5 percent on all the class rates covered by No. 28300, and these rates became effective August 22, 1947. Since that time the general increases in freight rates in Ex Parte Nos. 166 and 168 have been made effective.

1357

### Appendix "C" to Notice

#### *Special Rules of Practice Applicable in Docket No. 28300*

In addition to the General Rules of Practice, the following special rules will govern the further proceedings heretofore outlined and described.

1. *Submission of Evidence in Written Form With Affidavit Attached.* The Commission desires that all further evidence be submitted in written form with affidavits attached. Exhibits may be attached to the written statements, and such exhibits should conform to the General Rules of Practice, particularly to Rules 81 to 84, inclusive. All exhibits of a single witness should, so far as practicable, be incorporated in a single exhibit. The written evidence in the form of affidavits, with or without exhibits attached, will be referred to as verified statements, and each verified statement will be assigned a serial number by the Commission.

2. *Evidence-in-Chief on Behalf of Respondents.* Evidence-in-chief of respondents, or those parties in support of respondents, should be submitted in the form of verified statements as provided in paragraph 1. Such verified statements, with accompanying exhibit or exhibits, should be made available to the Commission by filing 25 copies thereof with the Secretary of the Commission on or before December 30, 1949. Copies of such verified statements of respondents should be made available to the parties by mailing a copy to any person who duly makes a request therefor to Robert D. Brooks, Assistant General Solicitor, New York Central System, 466 Lexington Avenue, New York, N. Y., chairman of respondents' committee of counsel, on or before December 20, 1949.

3. *Evidence-in-Chief on Behalf of Other Parties.* Parties other than respondents will be expected to furnish the Commission with twenty-five (25) copies, and to furnish the railroads respondents with twenty-five (25) copies, of all verified statements, the Commission's copies to be sent to the Secretary and the railroads respondents' copies to be sent to Robert D. Brooks, at the address specified in the prior paragraph. Such parties will be expected further to furnish three hundred (300) copies of each verified statement for distribution to interested parties. Such general coun-

sel as those representing the Secretary of Agriculture, the National Association of Railroad and Utilities Commissioners, the South-eastern Association of Railroad and Utilities Commissioners, the National Industrial Traffic League, the Southern Traffic League, the Southern Governors' Freight Rate Conference, the Southwestern Steering Committee, and the New England Governors, may make special requests for copies of all verified statements of parties other than respondents. Requests should be made to the Secretary of the Commission, and due notice will be given to the parties.

4. *Rebuttal Evidence.* Evidence on rebuttal by any party must be designated as such, and filed with the Secretary of the Commission within 30 days from the filing of the original evidence with the Commission. Its presentation and distribution will be governed by the rules set forth in paragraphs 1, 2, and 3 hereof.

5. *Objections to Evidence.* Notice of objections to receipt in evidence of any verified statement should be filed with the Secretary of the Commission within 25 days after its filing with the Commission. If the evidence is submitted on behalf of respondents, a copy of the notice should be immediately mailed to Robert D. Brooks; if the evidence is submitted on behalf of any other party, a copy of the notice should be immediately mailed to the witness or his attorney.

6. *Cross-Examination of Witnesses.* If cross-examination of a witness is desired by any party written request therefor must be given to the Secretary of the Commission and to the witness, 1358 or his authorized attorney, within 25 days after the filing of the witness' written statement. Such requests should indicate clearly and definitely the reasons therefor. If cross-examination is allowed and ordered, the Commission will fix the time and place therefor.

7. *Record.* The evidence presented and admitted pursuant to the provisions of paragraphs 1, 2, 3, and 4 of these special rules, shall be embraced in the entire record in these proceedings upon which decision will be made, subject to such cross-examination of any witness concerning any verified statements as may be requested by any interested party and ordered by the Commission.

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[Transcript of oral argument before the Interstate Commerce Commission on June 7, 1950, omitted in printing.]

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IN UNITED STATES DISTRICT COURT  
GREAT NORTHERN RAILWAY COMPANY, A CORPORATION, *Petitioner*,  
VS.  
UNITED STATES OF AMERICA, *Defendant*.  
No. 3586 Civil

**Opinion. Per Curiam—Filed March 16, 1951.**

The Great Northern Railway Company brings this action to set aside the order of the Interstate Commerce Commission dated July 31, 1950, and asking that said Commission be enjoined and restrained from enforcing the same.

In due course answers were made and filed by defendant and Montana Western Railway Company (hereinafter referred to as Montana Western), Board of Railroad Commissioners of the State of Montana, and the Valier Community Club. The cause came on for hearing before a statutory three-judge Court, in the United States Court House, at Minneapolis, Minnesota, on February 20, 1951.

The order of the Commission arises out of two proceedings before it, the first being Finance Docket 16515, entitled, In the Matter of Montana Western Railway Company Abandonment, to which plaintiff was not a party. The second, designated Docket 30325, is entitled, Valier Community Club, v. Montana Western Railway Company and Great Northern Railway Company. By the first proceeding applicant sought a certificate of convenience and necessity, authorizing abandonment of its entire line between Valier, 1428 Montana, and its junction with the line of the Great Northern Railway Company. The second is a proceeding commenced by a voluntary organization of citizens of Valier against the carriers named, seeking the establishment of reasonable joint rates on grain in carloads from points on the Montana Western to points on the Great Northern, and the establishment of reasonable divisions of such rates.

In its report of July 31, 1950<sup>1</sup>, the Commission sets forth an accurate and full recital of the facts. It appears therefrom that Montana Western was incorporated under the laws of Montana in 1909, and extends from Valier to the junction with the Great Northern at Conrad, a distance of about twenty miles, as compared to 1030 miles from Conrad to Minneapolis via Great Northern. Valier is a hamlet of about 800 inhabitants. There are two non-agency stations on the line at Manson and Williams, of a population of ten and eleven respectively. The approximate area served by Montana Western is about 553 square miles, comprised of a total

<sup>1</sup> 275 I.C.C. 512.



population of about 2,000. Its bonded indebtedness is \$165,000, all of which is owned by the Great Northern, and bears interest at six percent from January 1, 1912. The principal and interest remain wholly unpaid. It also owes the Great Northern, as of March 31, 1949, \$195,829 for materials and supplies, repairs, labor and money advanced to cover operating expenses. The total indebtedness of the Montana Western to the Great Northern, at the time of the first hearing in July, 1949, was \$737,604. Since 1924, the Montana Western's operating losses have been paid by advances from the Great Northern. Its line was not built according to accepted standards of economical maintenance. Untreated cross ties were laid on the ground with practically no ballast. As a result, drainage is almost nil on the greater portion of the line, and the cross ties deteriorate rapidly. Its rolling stock consists of one gasoline-electric locomotive, one steam locomotive, with three sets of drivers, and one flatcar. There are motortruck and motor-bus services 1429 daily on Federal Highway No. 91 running north and south through Conrad. An oil-surfaced highway runs between Valier and Highway No. 91. The highway distance between Conrad and Valier is 23 miles. A graveled highway runs southwest from Valier, connecting with U. S. Highway No. 89. Most of the grain moves to Minneapolis and Duluth, Minnesota. Most of the farmers in the area served by the Montana Western ship their cattle by truck either to Great Falls, Montana, or to Shelby. The area served by the line produces from 800,000 to 1,000,000 bushels of grain annually. There is a bulk oil storage plant at Williams, but most of the oil stored in this plant is now brought in by motor truck. The key grade is three percent, and is against the out-bound movement, and limits the capacity of the steam locomotive to eight carloads and the gasoline-electric locomotive to two carloads of grain. The rates on grain from points on the line have always been proportional rates based on Conrad and resulted from an agreement made in 1924 after an investigation by the Board of Railroad Commissioners of the State of Montana. Only about five percent of the earload tonnage carried by the Montana Western moves on joint through rates with the Great Northern. The foregoing will suffice for the purpose of determining the issues raised in the present case. The Commission makes no particular point with reference to the reasonableness of the existing rates, and it makes no finding that such rates were unreasonable.<sup>2</sup>

<sup>2</sup> In *Beaumont, S. L. & W. Ry. v. United States*, 282 U. S. 74, at page 82, the Court, citing cases, says:

"The Commission may not change an existing division unless it finds that division unjust or unreasonable."  
See also *B. & O. R. Co. v. United States*, 298 U. S. 349, 357.



1430 That the Commission is authorized to act on its own initiative in proper cases<sup>3</sup>, and that appropriate probative effect may be given to rate comparisons<sup>4</sup>, may be taken for granted, but it seems obvious that the twenty miles of delapidated trackage and equipment used by the insolvent Montana Western (constituting 1.9 per cent of the 1050-mile joint haul to Minneapolis) is withering on the vine of its initial usefulness, and in the face of progress in and adequacy of transportation by motor vehicle over a system of public highways now serving the area<sup>5</sup>. The record of the instant case makes manifest that, except for liberal transfusions of financial aid during the past twenty-five years by the Great Northern, the Montana Western would long since have been dead on its wheels.

Resolving every presumption in favor and support of the order of the Commission, we cannot avoid concluding that prescribing joint through rates on the same level as existing lawful combinations, but with divisions which are unduly favorable to the Montana Western and clearly unfair to the Great Northern, is but a means to the end of assisting Montana Western to meet obvious financial needs. This is expressly prohibited by law.<sup>6</sup>

1431 That Montana Western is insolvent and is in dire need of financial aid if it is to continue to operate goes without saying. But the record affords no basis for the defendant and interveners forcing the Great Northern to finance this ailing railroad through a discriminatory division of joint rates. If those served by Montana Western feel the need of revitalizing it financially there is no legal barrier to their furnishing the necessary funds for its further operation. We are of the opinion that the Great Northern cannot be compelled, directly or indirectly, to assume that burden.

We think that the order of the Commission is not sustained by the evidence and is contrary to law; and that the relief prayed for by petitioner should be granted.

<sup>3</sup> Title 49, United States Code, Secs. 13(2), 15(1), (3), (6).

<sup>4</sup> Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1, 13; United States v. Northern Pacific Ry. Co., 238 U. S. 490, 500; Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476, 480.

<sup>5</sup> The record discloses that the area is served by a natural gas pipeline, thus depriving Montana Western of the equivalent coal tonnage haul. Oil and cattle are shipped by truck and mixed train passenger service must compete with the modern automobile.

<sup>6</sup> Title 49, United States Code, Sec. 15(4), contains the following prohibition:

"No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs."

United States v. Mo. Pac. R. Co., 278 U. S. 269; United States v. Chicago, Milwaukee, St. Paul & Pacific R. Co. et al., 294, U. S. 499, 506.

Petitioner may present findings of fact and conclusions of law consistent with this opinion.

Dated this 16th day of March, 1951.

JOHN B. SANBORN

*United States Circuit Judge.*

MATTHEW M. JOYCE

DENNIS F. DONOVAN

*United States District Judges.*

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

1432

(Title Omitted)

**Findings of Fact, Conclusions of Law, and Order for Judgment and Decree—Filed March 27, 1951**

The above-entitled matter came duly on for hearing on February 20, 1951, before a duly constituted district court of three judges convoked pursuant to Title 28, U. S. Code, Sections 2284 and 2325. Edwin C. Matthias, Anthony Kane and Louis E. Torinus, Jr., appeared for and in behalf of the petitioner. Donald E. Van Koughnet, Special Assistant to the Attorney General of the United States, H. G. Morison, Assistant Attorney General of the United States, James E. Killday and John F. Baecher, Special Assistants to the Attorney General of the United States, and Clarence U. Landrum, United States Attorney for the District of Minnesota, appeared for and in behalf of the defendant. Daniel W. Knowlton, Chief Counsel for the Interstate Commerce Commission, Edward M. Reidy, Associate Chief Counsel of said Commission, and Charlie H. Johns, Attorney, appeared for and in behalf of the Interstate Commerce Commission, intervening defendant. Edwin S. Booth, Secretary-Counsel of the Board of Railroad Commissioners of the State of Montana, and Lewis E. Popplar, Assistant Attorney General of the State of Montana, appeared for and in behalf of the Board of Railroad Commissioners of the State of Montana and Valier Community Club, intervening defendants. Art Jardine appeared for and in behalf of Montana Western Railway Company, intervening defendant.

Evidence having been introduced by petitioner and by intervening defendants and received by the Court, the Court having heard the arguments of counsel and having taken the cause under advisement and considered the pleadings, the evidence, the arguments and briefs of counsel and the Court being fully advised in

the premises and having filed its opinion herein on March 16, 1951, now makes the following Findings of Fact, Conclusions of Law, and Order for Judgment and Decree.

### Findings of Facts

#### I.

This suit has been brought to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission (hereinafter called the "Commission") in a proceeding entitled "Docket No. 30325, Valier Community Club vs. Montana Western Railway Company and Great Northern Railway Company" on July 31, 1950, as modified by subsequent amendments thereto. Said order was simultaneously entered by the Commission in a proceeding entitled "Finance Docket No. 16515, In the Matter of Montana Western Railway Company Abandonment" and embraces issues before the Commission in both said Docket 30325 and Finance Docket 1434 16515. This suit attacks the order only insofar as it affects issues in Docket 30325.

#### II.

Petitioner Great Northern Railway Company, hereinafter referred to as "Great Northern" is a corporation organized and existing under the laws of the State of Minnesota, having its principal office in Minnesota. It operates lines of railroad in the states of Montana, North Dakota, South Dakota, Iowa, Minnesota, Wisconsin, Idaho, Washington, Oregon and California, and is engaged in the transportation of property for hire, both interstate and intrastate. Montana Western Railway Company, hereinafter referred to as "Montana Western" is a corporation organized and existing under and by virtue of the laws of the State of Montana and operates a short line of railway extending 20 miles between Valier, Montana, a station only on the Montana Western, and Conrad, Montana, which is a station on both the Montana Western and Great Northern and a junction point between said railroads. The Montana Western is engaged in both interstate and intrastate commerce. The principal traffic handled by Montana Western consists of grain originating on its line and transported beyond its line through said junction at Conrad, Montana, to terminals on the Great Northern which are located outside of Montana at Minneapolis, Minnesota, Duluth, Minnesota, Seattle, Washington, and other points. The presently applicable rates for the transportation of grain from points on the Montana Western to points on the Great Northern are combinations of the separately established proportional rates of the Montana Western to Conrad, Montana, and the proportional rates of the Great Northern from Conrad, Montana, to such destinations.

## III.

On August 1, 1949, the Valier Community Club, a voluntary civic organization of Valier, Montana, filed with the Commission 1435 a complaint in said Docket 30325 in which Montana Western and Great Northern were made defendants. In said complaint as later amended Valier Community Club alleged that the combinations of proportional rates applicable to the transportation of grain from points on the Montana Western to points on the Great Northern via Conrad, Montana, should be made joint rates between the Montana Western and the Great Northern and prayed that an order be made creating such joint rates in amounts the equivalent of the presently existing combinations of proportional rates and that said railroads be required to divide the proceeds of said joint rates in such proportion as the Commission should order.

## IV.

Great Northern and Montana Western duly filed with the Commission their separate written answers to said complaint. On September 19, 1949, Great Northern moved the Commission, in said Docket 30325, for an order requiring complainant to eliminate from the prayer of said complaint the request that the Commission prescribe the divisions to be received by the respective defendants out of any joint rates which might be prescribed as a result of said proceeding, and for certain other relief. Thereafter and on October 13, 1949, upon consideration of said motion the Commission entered an order in both Docket 30325 and Finance Docket 16515, said order reading in part as follows:

*"It is ordered.* That said motion be, and it is hereby, overruled, without prejudice to the renewal of any portion or the whole thereof at the hearing;

*"It is further ordered,* That Finance Docket No. 16515 be, and it is hereby, reopened for further hearing, and that No. 30325 and Finance Docket No. 16515 be heard or further heard for disposition upon a common record \* \* \*."

1436 At the time said order of October 13, 1949, was made Finance Docket 16515, which consisted of an application by Montana Western to abandon its entire line of railroad, a proceeding to which Great Northern was not a party, had already been heard before an Examiner of the Interstate Commerce Commission and the record for the receipt of testimony therein had already been closed.

## V.

On December 5th and 6th, 1949, hearing upon the complaint in Docket 30325 and a further hearing in Finance Docket 16515 (re-



opened) was held at Great Falls, Montana, before the Honorable Myron Witters, an examiner for said Commission. At said hearing Great Northern renewed said motion of September 19, 1949, which was thereupon overruled. At said time Great Northern objected to the consolidation of Finance Docket 16515 (which was replete with evidence of the financial difficulties of the Montana Western) with Docket 30325, for hearing and disposition upon a common record, and said motion was likewise overruled. Evidence was received at said hearing but participation by Great Northern both at said hearing and at all stages of the proceedings, was confined to Docket 30325. In due course said Examiner issued a proposed report, exceptions to such proposed report were filed with the Commission, and the Commission heard oral argument in said consolidated proceedings. Thereafter the Commission, on July 31, 1950, entered a report and order in Docket 30325 and in Finance Docket 16515, consolidated. In said report the Commission made the following ultimate findings with respect to the issues in Docket 30325:

1437

"We \* \* \* find that it is necessary and desirable in the public interest that joint through rates be established for the interstate transportation of grain, in carloads, from points on the Montana Western to points on the Great Northern, and that such rates may not exceed the present combination of proportional rates to and from Conrad.

"We further find that just, reasonable, and equitable divisions of such joint rates are determined by the use as divisional factors of the distance rates set forth in appendix 10 of *Class Rate Investigation, 1939, supra*, [262 I.C.C. 447 at page 766] for the respective hauls of the two roads, provided that the divisional factors thus determined for the Montana Western shall be increased 20 percent, and provided further, that on grain to Minneapolis and Duluth, and points beyond, the divisional factors thus determined for the Great Northern shall be decreased 10 percent. Fractions in percentages shall be dropped when less than 0.5, increased to the next integer when over 0.5, and when equal an additional integer shall be added to the smaller of the percentages; fractions in divisional factors shall be dropped when less than 0.5 and increased to the next integer when 0.5 or over; and fractions in the resulting divisions shall be resolved to the nearest half cent."

(The Commission also found that public convenience and necessity do not permit abandonment of the Montana Western insofar as interstate and foreign commerce is concerned and that the application in Finance Docket 16515 should be denied.) The portions of the accompanying order, likewise entered at said time in said con-

solidated proceeding, which are material to Docket 30325 are as follows:

*"It is further ordered, That the above-named defendants in No. 30325 be, and they are hereby, notified and required to cease and desist, on or before November 16, 1950, and thereafter to abstain, from applying combinations of proportional rates for the interstate transportation of grain, in carloads, from points on the line of the Montana Western Railway Company to points on the line of the Great Northern Railway Company.*

1438

*"It is further ordered, That said defendants, be, and they are hereby, notified and required to establish on or before November 16, 1950, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of grain, in carloads, from points on the line of The Montana Western Railway Company to points on the line of the Great Northern Railway Company, joint rates, which shall not exceed the present combinations of proportional rates to and from Conrad, Mont.*

*"It is further ordered, That the just, reasonable and equitable divisions of the joint rates prescribed in the next preceding paragraph hereof shall be determined by the use as divisional factors of the distance rates set forth in appendix—10 to the report in *Class Rate Investigation, 1939*, 262 I.C.C. 447, at page 766, for the respective hauls of the Montana Western Railway Company and the Great Northern Railway Company; provided (1) that the divisional factors thus determined for the Montana Western Railway Company shall be increased 20 percent; (2) that on grain to Minneapolis and Duluth, Minn., and points beyond, the divisional factors thus determined for the Great Northern Railway Company shall be decreased 10 percent; and (3) that fractions shall be resolved as indicated in the report made a part hereof.*

*"And it is further ordered, That this order shall continue in force until the further order of the Commission."*

(The order also denied the abandonment application in Finance Docket 16515). By amendments to said order subsequently entered by the Commission the effective date thereof was from time to time postponed and the period of notice originally provided therein was shortened but otherwise the terms of said order were left unchanged. Said order as presently modified provides that compliance must be accomplished on or before April 1, 1951, on not less than one day's

notice (Instead of November 16, 1950, on not less than 30 days' notice as originally provided) but otherwise the terms of said order of July 31, 1950, remain in full force and effect.

1439

## VI.

Valier, Montana, has a population of about 800. There are two non-agency stations on the line of the Montana Western, Manson and Williams, having an estimated population of 10 and 11 respectively. Valier and Williams are grain shipping stations. The approximate area served by Montana Western is about 553 square miles, comprised of a total population of about 2,000. The Montana Western's bonded indebtedness is \$165,000, all of which is owed to the Great Northern, and bears interest at six percent from January 1, 1912. The principal and interest remain wholly unpaid. It also owes the Great Northern, as of March 31, 1949, \$195,829 for materials and supplies, repairs, labor and money advanced to cover operating expenses. The total indebtedness of the Montana Western to the Great Northern, at the time of the first hearing in July, 1949, in Finance Docket 16515 was \$737,604. Since 1924, the Montana Western's operating losses have been paid by advances from the Great Northern. These losses averaged over \$18,000 a year for the period from 1933 to 1948, inclusive. Its line was not built according to accepted standards of economical maintenance. Untreated cross ties were laid on the ground with practically no ballast. As a result, drainage is almost nil on the greater portion of the line, and the cross ties deteriorate rapidly. Its rolling stock consists of one gasoline-electric locomotive, one steam locomotive, with three sets of drivers, and one flatcar. There are motortruck and motor bus services daily on Federal Highway No. 91 running north and south through Conrad. An oil-surfaced highway runs between Valier and Highway No. 91. The highway distance between Conrad and Valier is 23 miles. A graveled highway runs southwest from Valier, connecting with U. S. Highway No. 89. Outbound grain to interstate destinations reached by or via the Great Northern constitutes about 90 percent of the tonnage carried by the Montana Western.

1440 Most of the grain moves to Minneapolis and Duluth, Minnesota. Most of the farmers in the area served by the Montana Western ship their cattle by truck either to Great Falls, Montana, or to Shelby. The area served by the line produces from 800,000 to 1,000,000 bushels of grain annually. There is a bulk oil storage plant at Williams, but most of the oil stored in this plant is now brought in by motortruck. The key grade is three percent, and is against the outbound movement, and limits the capacity of the steam locomotive to eight carloads and the gasoline-electric locomotive to two carloads of grain. The rates on grain from points on the line



have always been proportional rates based on Conrad and resulted from an agreement made in 1924 after an investigation by the Board of Railroad Commissions of the State of Montana. Only about five percent of the carload tonnage carried by the Montana Western moves on joint through rates with the Great Northern.

The present proportional rates of the Montana Western on grain are 9 cents from Valier to Conrad,\* 20 miles, and 8.5 cents from Williams to Conrad, 14 miles. The present proportional rate of the Great Northern from Conrad to Minneapolis is 62.5 cents for 1030 miles, making a total of 71.5 cents from Valier and 71 cents from Williams. The Great Northern's proportional rate from Conrad to Seattle, Wash., 788 miles, and points taking the same rate, is 58.5 cents, making a combination of 67.5 cents from Valier and 67 cents from Williams. The proportional rate from Conrad to Spokane, Wash., 457 miles, is 56 cents, making a combination of 65 cents from Valier and 64.5 cents from Williams.

1441 Under the present basis of proportional rates the Montana Western, which performs 1.9 percent of the 1050-mile haul from Valier to Minneapolis, for example, receives 12.6 percent of the through charges. Under the joint rates and divisions prescribed in said report and order in Docket 30325 the share of Montana Western would be increased from 9 cents per cwt. to 16.5 cents, the percentage of 12.6 being increased to 23 percent. The Great Northern, which furnishes all the box cars and grain doors to the Montana Western necessary to originate the grain traffic and which performs on its own line, without extra charge, in connection with grain movements to all terminals, the switching and terminal services included in stops for transit and inspection which are availed of as an incident to the transportation and marketing of grain, would, under said report and order, have its compensation for 98.1 percent of the haul (1030 miles) from Valier to Minneapolis reduced from 87.4 percent to 77 percent of the through revenue.

Considering all grain and mustard seed handled by the Montana Western during the period from January 1, 1946, to September 30, 1949, the Montana Western under its present proportional rates has received 12.8 percent of the total through revenue for an average of 1.9% of the total haul and the Great Northern 87.2 percent of the total through revenue for an average of 98.1 percent of the total haul. Under the joint rates and divisions ordered by the Commission by said report and order the revenue accruing to the Montana Western would be increased to from 22 to 29 percent of the through charges on grain movements from Valier and Williams to Minneapolis, Minnesota, and Spokane and Seattle, Washington, and the

\* Rates are stated in cents per cwt. unless otherwise indicated.



Great Northern's revenue decreased to from 71 percent to 78 percent of said through charges.

1442 The establishment of the joint through rates so required by the Commission would not affect in any way the charges which the shippers must pay but by prescribing joint rates and divisions in the amount indicated as aforesaid the Commission seeks to require (by its report and order to Docket 30325) an increase of the Montana Western's share of the through revenues by an annual amount of at least \$35,000, which increased revenues for the Montana Western are found by the Commission to be "needed to insure safe and efficient operation of that carrier's line and to pay interest on its indebtedness to the Great Northern."

## VII.

The aforesaid existing combinations of proportional rates on grain from points on the Montana Western to points on the Great Northern are not found in said report to be unlawful in any respect. The Commission in said order prescribed joint through rates in the same amounts as said existing lawful combinations, to take the place of such combinations, solely as a foundation for fixing divisions which will allow Montana Western a substantially increased proportion of the through revenue for the purpose of assisting that carrier in meeting its financial needs.

## VIII.

The order in Docket 30325 to the extent it requires joint through rates and the order in said proceeding insofar as it fixes divisions of such joint rates were entered simultaneously. The order fixing divisions was entered without any finding in the report that any existing divisions have been, are, or will be unlawful or that the existing apportionment of through charges has been, is, or will be unlawful in any respect.

1443

## IX.

The Commission's aforesaid order requiring a cessation of the present basis of apportioning through revenues under said proportional rates and its report and order prescribing joint through rates and divisions for the future, are based upon an insufficiency of competent evidence of record to support such a result and are in fact arbitrary, directly contrary to the evidence, and result in an apportionment of revenues unduly favorable to the Montana Western and clearly unfair to the Great Northern.

## X.

Said report and order require the Great Northern to forego its present charges on grain from Conrad under rates not found in any respect unlawful and to become a joint participant with an insolvent railroad in a transportation service to which the Great Northern is not now committed except under its separately established charge from Conrad solely so that under joint rates and the new allocation of Charges ordered the insolvent can be relieved of its financial difficulties at Great Northern's expense, without, however, the allowance of compensation to the Great Northern for giving up its present reasonable charges from Conrad.

## XI.

If said order is permitted to become operative April 1, 1951, as now provided, it will cause Great Northern irreparable injury and damage of the Nature herein after set forth.

1. If Great Northern complies with said order by establishing and publishing the joint through rates as prescribed by the Commission and establishing the divisions set forth in said order Great Northern will suffer an annual loss in the amount of \$35,000 or more from the revenues it now receives under its existing lawful proportional rates on grain from points on Montana Western to points on Great Northern.

2. If Great Northern refuses to comply with said order of the Commission such refusal will constitute a violation of the provisions of Paragraph 8 of Section 16 of the Interstate Commerce Act and such refusal may subject Great Northern to statutory penalties of \$5,000 for each such violation, each day of such refusal being deemed a separate offense, and such conduct will expose Great Northern to an action by the United States of America for the recovery of such penalties [49 U. S. C. Section 16 par. (8)].

**Conclusions of Law**

Upon the foregoing facts the Court makes the following conclusions of law:

## I.

The Court has jurisdiction of the cause and of the parties thereto.

## II.

Great Northern has no plain, adequate or complete remedy at law in the premises.

## III.

The relief prayed for in the petition should be granted and a judgment and decree entered setting aside, annulling and perpetual-

ly enjoining the enforcement of said order of the Commission insofar as it relates to the issue in said Docket 30325.

1445

**Order for Judgment and Decree**

Let the judgment and decree of this Court be entered accordingly.

JOHN B. SANBORN

*United States Circuit Judge*

M. M. JOYCE

DENNIS F. DONOVAN

*United States District Judges*

Dated March 27, 1951.

[File Endorsement Omitted]

1446

IN UNITED STATES DISTRICT COURT

GREAT NORTHERN RAILWAY COMPANY, A CORPORATION, *Petitioner,*  
VS.

UNITED STATES OF AMERICA, *Defendant,*

INTERSTATE COMMERCE COMMISSION, VALIER COMMUNITY CLUB, A VOLUNTARY CIVIC ORGANIZATION, BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, AND MONTANA WESTERN RAILWAY COMPANY, *Intervening Defendants.*

(Civil No. 3586)

**Final Judgment and Decree—Filed March 27, 1951**

The above-entitled action having come on for final hearing on February 20, 1951, before a duly constituted district court of three judges convoked pursuant to Title 28, U. S. Code, Sections 2284 and 2325, and all parties being represented by counsel, and evidence having been introduced by petitioner and by intervening defendants and received by the Court and the Court having heard the arguments of counsel and having considered the pleadings, the evidence, the arguments, and briefs of counsel and being fully advised in the premises, and the Court having filed its opinion on March 16, 1951, and having filed its findings of fact and conclusions of law and order for judgment and decree herein on March 27, 1951, and in accordance therewith, the Court being of opinion and concluding

1447 that the Interstate Commerce Commission's order in Docket 30325 entered July 31, 1950 (as subsequently modified by the Commission), insofar as said order requires Great Northern Railway Company and Montana Western Railway Company to cease, desist and abstain from applying combinations of proportional rates for the interstate transportation of grain, in carloads,



from points on the line of the Montana Western Railway Company to points on the line of the Great Northern Railway Company and insofar as said order requires said defendants to establish, maintain and apply joint rates for said transportation and certain divisions of such joint rates, is null and void and should be set aside, annulled, and the enforcement thereof permanently enjoined, it is hereby

**ORDERED, ADJUDGED AND DECREED** that certain order of the Interstate Commerce Commission in its Docket 30325, Valier Community Club vs. Montana Western Railway Company and Great Northern Railway Company, entered July 31, 1950, as subsequently modified, insofar as said order requires Montana Western Railway Company and Great Northern Railway Company to cease, desist and abstain from applying combinations of proportional rates for the interstate transportation of grain, in carloads, from points on the line of the Montana Western Railway Company to points on the line of the Great Northern Railway Company and insofar as it requires said defendants to establish, maintain and apply to such transportation joint rates and certain divisions of such joint rates be, and it is, hereby set aside and annulled and the enforcement thereof by the defendant is perpetually enjoined.

1448 Dated this 27, day of March, 1951.

JOHN B. SANBORN

*United States Circuit Judge*

M. M. JOYCE

DENNIS F. DONOVAN

*United States District Judges*

[File Endorsement Omitted]

[File Endorsement Omitted]

1450

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Transcript of Hearing—Filed June 18, 1951**

The above-entitled matter came on for hearing before the Honorable Judges Sanborn, Joyce, and Donovan, in the court room of Judge Joyce, United States Court House, Minneapolis, Minnesota, on the 20th day of February, 1951.

**Appearances:**

Mr. Edward M. Reidy, appearing on behalf of the Interstate Commerce Commission.



Messrs. Anthony Kane and Louis E. Torinus appearing on behalf of the Great Northern Railway Company.

Mr. Art Jardine, appearing on behalf of Montana Western Railway Company.

Messrs. Donald E. Van Koughnet, Edwin S. Booth and Lewis E. Poppler appearing on behalf of the U. S. Board of Railroad Commissioners and the Valier Community Club.

1451

### Proceedings

Judge Sanborn: The Court has been convened for the purpose of hearing the case of Great Northern Railway Company, a corporation, vs. the United States of America.

Are counsel ready?

Mr. Torinus: Counsel for the Petitioner is ready, Your Honor.

Judge Sanborn: You may proceed, Mr. Torinus.

Mr. Torinus: The Clerk has the appearances, Your Honor. Before we proceed, however, I would like to move the admission for the purposes of this case of Edwin S. Booth, the secretary counsel of the Montana Board of Railroad Commissioners who is admitted to practice in the State and Federal courts of the State of Montana and Lewis E. Poppler, Assistant Attorney General of the State of Montana, who is admitted to practice in the State of Montana.

Judge Sanborn: Very well.

Mr. Torinus: I would also like to include Mr. Art Jardine who is admitted to practice in the state and federal courts of Montana.

Judge Sanborn: Those gentlemen may be admitted for the purposes of this case.

Mr. Torinus: Before proceeding with the formal presentation of an argument there are some preliminary matters that perhaps should be cleared up for the record.

1452 When the petition in this case was filed the effective date of the Interstate Commerce Commission's order which is referred to in the petition was January 15, 1951, on not less than one day's notice. Subsequent to the filing of the petition in this court on December 19 the Commission postponed the effective date of its order until March 1, 1951, upon not less than one day's notice. The parties who have answered our petition have so alleged in their answering documents and the complainant or rather the petitioner in this proceeding will stipulate as the pleadings show, that the effective date of the order has now been continued until March 1, 1951.

I would like also to offer at this time in evidence in this court as the Petitioner's first exhibit which I presume should be marked

Petitioner's Exhibit No. 1 a certified copy of the pleadings, the testimony, and exhibits, the orders and the report of the Commission in Docket 30325, Commission's Docket 30325, Valier Community Club v. Montana Western Railway Company.

I will identify these documents for the convenience of counsel and the Court. They are, Finance Dockets 16515, the application for abandonment, the return to the questionnaire. I should say that the application was filed with the Commission March 29, 1949, the return to the questionnaire May 9, 1949. Transcript of the stenographer's notes of the hearing held July 11, 12, and 13, 1949, 1453 in that proceeding at Valier, Montana. The exhibits filed at said hearing, also the complaint Docket 30325, the answers in Docket 30325, the motion of the Great Northern Railway Company in that proceeding filed September 20, 1949, the order of the Commission on the motion dated October 13, 1949, the transcript of the stenographer's notes of the hearing in that proceeding and in Finance Docket 16515 at Great Falls and the exhibits filed at the hearing, the Examiner's report which was served March 10, 1950, notice of the Commission dated May 4, 1950, assigning the matter for oral argument, the report and order of the Commission dated July 31, 1950, and the subsequent orders of the Commission modifying the order of July 31, 1950.

Mr. Reidy: No objection, but in view of the fact that that apparently doesn't include the oral argument before the Interstate Commerce Commission and in view of the further fact in a brief which I proposed to file later this morning I make reference to a concession at that argument, I would like to introduce a copy of the oral argument made before the Commission in this case.

Judge Sanborn: Is there any objection to that?

Mr. Torinus: I have no objection to the oral argument. I don't know as it is pertinent in a proceeding before the Court. The question is what evidence is before the Commission but I have no objection to it.

Judge Sanborn: The exhibit will be received and also the oral argument before the Commission.

Mr. Van Koughnet: No objection on behalf of the Government.

Mr. Torinus: It is understood that Petitioner's Exhibit 4 is received in evidence.

Judge Sanborn: That is right.

Mr. Torinus: I assume that the document which Mr. Reidy has offered should be identified as Defendant's Exhibit 1.

Judge Sanborn: Yes, I presume so. That may be marked Defendant's Exhibit 1.

Mr. Torinus: May it be understood, as I understand it, that that is in evidence also.

Judge Sanborn: Yes.

MR. REIDY: For the convenience of the Court and not as part of the record, we have undertaken an abstract of the testimony introduced before the Interstate Commerce Commission at these two proceedings and it covers 52 pages. We are hopeful it may save the Court's time if he just reads the abstract and appropriate references are made therein to the pages of the testimony if you want to go into that.

Judge Sanborn: We should be very glad to have it, Mr. Reidy. I presume Mr. Torinus has a copy or will have a copy.

1480 Now in connection with this argument on Subdivision 3 I would like to introduce another exhibit into evidence and that I would like to have marked Exhibit 2.

(Petitioner's Exhibit 2 marked for identification.)

Mr. Torinus: In the class rate decision the Commission prescribed class rates on traffic moving in a territory east of the Montana-North Dakota state line. The Appendix 10 scale prescribed in that decision never became effective. The Commission has recently reopened the class rate case to determine whether the Appendix 10 scale should be modified in any respect.

Now Petitioner's Exhibit 2 which I would like to introduce in evidence in this case, is a certified copy of a Commission's order reopening the class rate investigation for the purpose of considering whether or not the Appendix 10 scale should be revised and to what extent. It was not a part of the record before the Commission in this case because at the time this case was being heard no one knew that the Appendix 10 scale was ever going to be considered by the Commission and it was not apparent that the Commission would use the Appendix 10 scale as a primary determinant of the result in this case until the decision was out.

I would like to offer Petitioner's Exhibit 2 in evidence solely for the purpose of showing that a modification of the Appendix 1481 10 scale is now under consideration.

Mr. Reidy: I have no objection to that.

Mr. Van Koughnet: No objection.

Judge Sanborn: Very well, the exhibit will be received.

[Page 3482-1556 omitted]

1557

(Whereupon, at 3:45 the matter was submitted.)



I hereby certify the above is a true and complete transcript of my shorthand notes in this case:

G. J. FRANKLE  
Official Reporter

1558

IN UNITED STATES DISTRICT COURT

(Title Omitted)

[File Endorsement Omitted]

**Petition for Appeal—Filed May 25, 1951**

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the United States District Court for the District of Minnesota, Fourth Division, entered in said court on March 27, 1951, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants consider the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 23rd, 1951.

/s/ H. G. MORISON  
Assistant Attorney General

/s/ RALPH S. SPRITZER  
Special Assistant to the Attorney General

/s/ C. U. LANDRUM  
United States Attorney, For the  
United States of America

1559

/s/ DANIEL W. KNOWLTON  
Chief Counsel, Interstate Commerce Commission.

/s/ EDWARD M. REIDY  
Associate Chief Counsel, Interstate Commerce Commission. For the Interstate Commerce Commission.



1560

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Order Allowing Appeal—Filed May 23, 1951**

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in said cause entered on March 27, 1951, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such case made and provided:

*It is ordered and decreed*, That the said appeal be, and the same is hereby, allowed as prayed for.

Dated May 23, 1951.

/s/ JOHN S. SANBORN  
United States Circuit Judge

1561

{Citation in usual form omitted in printing.}

1562

IN UNITED STATES DISTRICT COURT

:(Title Omitted)

**Notice of Appeal—Filed May 25, 1951**

To: Great Northern Railway Company.

Board of Railroad Commissioners, State of Montana

Montana Western Railroad Company

Valier Community Club

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, hereby appeal to the Supreme Court of the United States from the final order and decree of the United States District Court for the District of Minnesota, Fourth Division, made and entered March 27, 1951, setting aside the order of the Commission of July 31, 1950, in Docket No. 30325, prescribing joint rates for the interstate transportation of grain, in carloads, from points on the Montana Western Railroad Company to points on the Great Northern Railway, after finding such joint rates to be necessary and

desirable in the public interest, and wherein it also prescribed just, reasonable and equitable divisions of such joint rates.

Dated May 24th, 1951.

1563

/s/ H. G. MORISON

*Assistant Attorney General.*

/s/ RALPH S. SPRITZER

*Special Assistant to the Attorney General.*

/s/ C. U. LANDRUM

*United States Attorney, For the United States of America.*

/s/ DANIEL W. KNOWLTON

*Chief Counsel, Interstate Commerce Commission.*

/s/ EDWARD M. REIDY

*Associate Chief Counsel, Interstate Commerce Commission. For the Interstate Commerce Commission.*

[File Endorsement Omitted]

1564

IN UNITED STATES DISTRICT COURT

(Title Omitted)

### Assignment of Errors—Filed May 25, 1951

Now come the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, and in connection with their appeal herein file the following assignment of errors upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the final decree of the District Court dated March 27, 1951. The District Court erred:

1. In concluding that the order of the Commission of July 31, 1950, 275 I.C.C. 512, prescribing joint through rates and a division of said rates, resulted in divisions which were "unduly favorable to the Montana Western and clearly unfair to the Great Northern".

2. In holding that said order fixing joint rates for the Great Northern Railway Company and the Montana Western Railway Company violates the prohibitions of Section 15(4) of the Interstate Commerce Act.

3. In holding that the record affords no basis for the division of joint rates prescribed by the Commission's order, and that said order results in a discriminatory division of said joint rates as be-

tween the Great Northern Railway and the Montana Western Railway Company.

1565 4. In holding that the order of the Commission of July 31, 1950, is not sustained by the evidence.

5. In holding that the order of the Commission of July 31, 1950, is contrary to law.

6. In substituting its judgment for that of the Commission upon administrative matters.

7. In making and entering its Findings of Fact numbered VII, VIII, IX and X, and its Conclusions of Law numbered II and III.

8. In failing to find that the Interstate Commerce Commission in its decision of July 31, 1950, and subsequent orders validly exercised its statutory authority to fix joint rates and the divisions of such joint rates between the Montana Western Railway Company and the Great Northern Railway Company.

9. In failing to enter a final decree dismissing the complaint.

WHEREFORE, defendants, United States and Interstate Commerce Commission, pray that said decree of March 27, 1951, be reversed.

Dated May 23, 1951

/s/ H. G. MORISON  
Assistant Attorney General.

/s/ RALPH S. SPRITZER  
Special Assistant to the Attorney General.

/s/ C. U. LANDRUM  
United States Attorney, For the  
United States of America.

/s/ DANIEL W. KNOWLTON  
Chief Counsel, Interstate Commerce  
Commission.

/s/ EDWARD M. REIDY  
Associate Chief Counsel, Interstate  
Commerce Commission. For the Inter-  
state Commerce Commission.

[File Endorsement Omitted]

1566 Statement directing attention to paragraph 3 of rule 12 of the revised rules of the Supreme Court of the United States (omitted in printing.)

1568 CERTIFICATE OF SERVICE (omitted in printing)

[File Endorsement Omitted]

1569

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Order As to Exhibits—Filed May 23, 1951**

In accordance with the provisions of defendants: United States and Interstate Commerce Commission, praecipe for transcript of record on appeal of the above-entitled cause to the Supreme Court of the United States:

*It is hereby ordered*, That the documents and papers received in evidence in the District Court in the trial of this cause, and the stenographer's transcript of the proceedings held before the three-judge court on July 11-13, 1949 and December 5-6, 1949, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

Dated this 23rd day of May, 1951:

/s/ JOHN B. SANBORN  
United States Circuit Judge.

1570

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Praecipe—Filed May 25, 1951**

The Clerk will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include therein:

1. Petition of the Great Northern Railway Company, together with Exhibits A-E, inclusive.
2. Answer of the United States.
3. Intervention of the Interstate Commerce Commission.
4. Answer of the Interstate Commerce Commission.
5. Answer of The Montana Western Railway Company.
6. Motion to intervene as defendant by the Board of Railroad Commissioners of the State of Montana.
7. Consent to intervention of the Board of Railroad Commissioners of the State of Montana by the Interstate Commerce Commission.
8. Answer in intervention by the Board of Railroad Commissioners of the State of Montana.



- 1571 9. Motion to intervene as defendant by the Valier Community Club.
10. Notice of hearing and order convoking a three-judge court.
11. Order of the Interstate Commerce Commission postponing the effective date of its order, filed March 28, 1951.
12. Exhibit No. 1, record before the Commission.
13. Exhibit No. 2, oral argument before the Commission.
14. *Per curiam* opinion of the Court, U.S. Circuit Judge John B. Sanborn and U.S. District Judges Matthew M. Joyce and Dennis F. Donovan, dated March 16, 1951.
15. Findings of fact and conclusions of law approved by the Court and filed March 27, 1951.
16. Final judgment and decree of the Court, dated March 27, 1951.
17. Petition for appeal.
18. Order allowing appeal.
19. Citation on appeal.
20. Notice of appeal to plaintiff and others.
21. Assignment of errors by the United States and Interstate Commerce Commission.
22. Statement by defendants directing attention to paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States and proof of service.
23. Order of the District Court as to exhibits.
24. This praecipe.

Dated May 23rd, 1951.

/s/ H. G. MORISON  
Assistant Attorney General.

/s/ RALPH S. SPRITZER  
Special Assistant to the Attorney General.

1572

/s/ C. U. LANDRUM  
United States Attorney, For the  
United States of America.

/s/ DANIEL W. KNOWLTON  
Chief Counsel, Interstate Commerce  
Commission.

/s/ EDWARD M. REIDY  
Associate Chief Counsel, Interstate  
Commerce Commission. For the Inter-  
state Commerce Commission.

[File Endorsement Omitted]

1573

## IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Petition for Inclusion In Appeal—Filed May 25, 1951**

The Board of Railroad Commissioners of the State of Montana, the Valier Community Club and the Montana Western Railway Company, intervening defendants in the above entitled cause, feeling themselves aggrieved by the final decree of the United States District Court for the District of Minnesota, Fourth Division, entered in said court on March 27, 1951, pray inclusion as appellants in an appeal from said decree to the Supreme Court of the United States filed by the United States of America and the Interstate Commerce Commission.

These defendants adopt the Assignment of Errors and Statement as to Jurisdiction and all other papers filed by the United States of America and the Interstate Commerce Commission in connection with the appeal as their own.

Dated May 25th, 1951.

1574

**ARNOLD H. OLSEN***Attorney General of the State of Montana.***CHARLES V. HUPPE***Assistant Attorney General of the State of Montana.***EDWIN S. BOOTH***Secretary-Counsel of the Board of Railroad Commissioners of the State of Montana.*

*Attorneys for the Board of Railroad Commissioners of the State of Montana, Helena, Montana.*

**LESTER H. LOBLE***Securities Building Helena, Montana.*

*Attorney for the Valier Community Club, a voluntary civic organization.*

**ART JARDINE***410 First National Bank Building  
Great Falls, Montana*

*Attorney for the Montana Western Railway Company.*

1575

IN UNITED STATES DISTRICT COURT

[File Endorsement Omitted]

(Title Omitted)

**Order Allowing Inclusion In Appeal—Filed May 25, 1951**

The Board of Railroad Commissioners of the State of Montana, Valier Community Club and the Montana Western Railway Company, defendants in the above entitled cause have made and filed a petition praying to be included in the appeal filed by the United States of America and the Interstate Commerce Commission to the Supreme Court of the United States from the final decree of this court in said cause entered on March 27, 1951, said defendants having adopted as their own the Assignments of Error and Statement of Jurisdiction and all papers filed by the United States of America and the Interstate Commerce Commission and having in all respects conformed to the statutes and rules of the court in such cases made and provided.

1576 IT IS ORDERED AND DECREED that these defendants be, and that they are hereby included in the appeal, as co-appellants, as prayed for.

Dated this 25th day of May, 1951.

/s/ MATHEW M. JOYCE  
District Judge

[File Endorsement Omitted]

1577

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Notice for Inclusion In Appeal—Filed May 25, 1951**

TO: THE GREAT NORTHERN RAILWAY COMPANY.

Please take notice that pursuant to the statutes and rules of the court in such cases made and provided the Board of Railroad Commissioners of the State of Montana, the Valier Community Club and the Montana Western Railway Company, intervening defendants in the above entitled cause hereby join with the United States of America and the Interstate Commerce Commission, as co-appellants, in the appeal to the Supreme Court of the United States from the final order and decree of the United States District Court for the District of Minnesota, Fourth Division, made and entered March 27, 1951, setting aside the order of the Commission of July 31, 1950, in Docket No. 30325, prescribing joint rates for the interstate transportation of grain, in earloads,

from points on the Montana Western Railroad Company to 1578 points on the Great Northern Railway, after finding such joint rates to be necessary and desirable in the public interest, and wherein it also prescribed just, reasonable and equitable divisions of such joint rates:

Dated May 25th, 1951.

ARNOLD H. OLSEN  
Attorney General of the State of Montana.

CHARLES V. HUPPE  
Assistant Attorney General of the State of Montana.

EDWIN S. BOOTH  
Secretary-Counsel of the Board of Railroad Commissioners of the State of Montana.

Attorneys for the Board of Railroad Commissioners of the State of Montana, Helena, Montana.

LESTER H. LOBLE  
Securities Building, Helena, Montana.  
Attorney for the Valier Community Club, a voluntary civic organization.

ART JARDINE  
410 First National Bank Building,  
Great Falls, Montana  
Attorney for the Montana Western Railway Company.

[File Endorsement Omitted]

1579

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Præcipe—Filed May 25, 1951

In addition to the papers to be included in the transcript to the Clerk of the United States Supreme Court as requested by the United States of America and the Interstate Commerce Commission, the clerk will please include the:

1. Petition for Inclusion in Appeal
2. Order allowing Inclusion in Appeal



## 3. Notice of Inclusion in Appeal

and this Praeceptum in the transcript to be prepared.

1580

ARNOLD H. OLSEN

*Attorney General* of the State of Montana.

CHARLES V. HUPPE

*Assistant Attorney General* of the State of Montana.

EDWIN S. BOOTH

*Secretary-Counsel* of the Board of Railroad Commissioners of the State of Montana.

Attorneys for the Board of Railroad Commissioners of the State of Montana, Helena, Montana.

LESTER H. LOBLE

Securities Building, Helena, Montana.

Attorney for the Valier Community Club, a voluntary civic organization.

ART JARDINE

410 First National Bank Building,  
Great Falls, Montana

Attorney for the Montana Western Railway Company.

[File Endorsement Omitted]

1581

ADMISSION OF SERVICE (omitted in printing)

[File Endorsement Omitted]

1582

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Order—Filed June 6, 1951.**

Upon all the files and records herein and upon the motion of Great Northern Railway Company, petitioner-appellee, the time within which petitioner-appellee may file and serve its counter-praeceptum herein is hereby fixed as June 8, 1951.

Dated at Minneapolis, Minnesota, this 6th day of June, 1951.

MATTHEW M. JOYCE

*United States District Judge*

1583

[File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Counter-Praecept—Filed June 7, 1951**

To the Clerk of the Court above-named:

In preparing the transcript of record in the above-entitled cause, in addition to the papers to be included in the transcript to the Clerk of the United States Supreme Court as directed by the appellants, the Clerk will please include the following:

- (1) Order organizing three-judge court filed December 26, 1950.
- (2) The stenographer's transcript of the proceedings held before the three-judge court herein on February 20, 1951.
- (3) Exhibit No. 2, received at said proceedings on 1584 February 20, 1951, being a notice by the Interstate Commerce Commission dated November 18, 1949, in its Docket No. 28300. (This is the same as Exhibit No. 2 referred to in Item 12 of the praecipe of the United States of America and Interstate Commerce Commission, defendants-appellants, but it is herein correctly described.) Exhibit A, oral argument before the Commission.
- (4) Order fixing time for filing and serving counter-praecept.
- (5) This counter-praecept with proof of service thereof.

June 7, 1951.

EDWIN C. MATTHIAS

ANTHONY KANE

LOUIS E. TORINUS, JR.

*Attorneys for Petitioner,*

1120 Great Northern Building,

Saint Paul 1, Minnesota

1585

CERTIFICATE OF SERVICE (omitted in printing)

[File Endorsement Omitted]

1586

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Amended Order As to Exhibits—Filed June 11, 1951**

Whereas, it has been made to appear by the United States Attorney for the District of Minnesota, one of the attorneys for the appellant in the above-entitled action, that an error was made in preparation of the Order as to Exhibits made May 23, 1951, by reference to proceedings before a three-judge court on July 11-13, 1949 and December 5-6, 1949, whereas such proceedings were in fact had before the Interstate Commerce Commission;

Now, THEREFORE, on motion of the United States Attorney for the District of Minnesota,

IT IS ORDERED, that the second paragraph of said Order as to Exhibits may be and is hereby amended as follows:

*It is hereby ordered, That the documents and papers received in evidence in the District Court in the trial of this cause, and the stenographer's transcript of the proceedings held before the Interstate Commerce Commission on July 11-13, 1949 and December 5-6, 1949, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.*

Dated this 11 day of June, 1951.

JOHN B. SANBORN  
*Circuit Judge*

1587 [Clerk's Certificate to foregoing transcript omitted in printing.]

1588

## IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

(Title Omitted)

No. 151

On Appeal from the United States District Court for the District  
of Minnesota, Fourth Division.

**Statement of Points to Be Relied Upon—Filed August 28, 1951.**

Appellants adopt for their statement of points upon which they  
intend to rely in their appeal to this Court the points contained in  
their Assignment of Errors heretofore filed.

PHILIP B. PERLMAN

*Solicitor General.*

EDWARD M. REIDY

*Associate Chief Counsel,**Interstate Commerce Commission.*

1589

CERTIFICATE OF SERVICE (omitted in printing)

1590

**Stipulation**

It is hereby agreed between counsel for the above-named appel-  
lants and for the appellee in the above-entitled case that the entire  
record, as filed pursuant to the praecipis and counter-praecepe to  
the clerk of the United States District Court for the District of  
Minnesota, Fourth Division, shall be printed, except as follows:

(1) The transcript of oral argument before the Interstate  
Commerce Commission, defendant's first exhibit received in  
evidence by the District Court, shall not be printed;

(2) Exhibits received in evidence by the Commission shall not  
be printed;

(3) The following portions of the proceedings before the Dis-  
trict Court on February 20, 1951, according to the  
stenographer's transcript thereof—page 5, lines 2 to 25  
inclusive; pages 6 to 29 inclusive; page 30, line 1; pages

1591



32 to 106 inclusive; page 107, lines 1 to 8 inclusive—shall not be printed. (It is understood, however, that there shall be printed the initial page of the transcript of said District Court proceedings, pages 1 to 4 inclusive; page 5, line 1; page 30, lines 2 to 25; page 31; and page 107, line 9.)

It is further agreed that any party may refer, in brief or oral argument, to any matter included in the record filed with this Court but not printed, with the same force and effect as if the same had been printed.

Dated August 21, 1951.

PHILIP B. PERLMAN  
*Solicitor General*

EDWARD M. REIDY  
*Associate Chief Counsel,*  
Interstate Commerce Commission

EDWIN C. MATTHIAS  
ANTHONY KANE

L. E. TORINUS, JR.  
*Attorneys for Great Northern Rail-*  
*way Company*

1592

SUPREME COURT OF THE UNITED STATES

No. 151—, October Term, 1951

(Title Omitted)

Order—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.